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# TEXAS REGISTER

*Volume 35 Number 43*

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*Devin McQueen  
10th Grade*



School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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P.O. Box 13824  
Austin, TX 78711-3824  
(512) 463-5561  
FAX (512) 463-5569

<http://www.sos.state.tx.us>  
[register@sos.state.tx.us](mailto:register@sos.state.tx.us)

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Hope Andrade

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Dan Procter

**Staff**  
Leti Benavides  
Dana Blanton  
Kris Hogan  
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# Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register's* Internet site:  
<http://www.sos.state.tx.us/open/index.shtml>

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: [register@sos.state.tx.us](mailto:register@sos.state.tx.us)

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://www.oag.state.tx.us/open/index.shtml>

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:  
<http://www.texas.gov>

...

**Meeting Accessibility.** Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

# THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following:  
Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from  
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <http://www.oag.state.tx.us/opinopen/opinhome.shtml>.)

## Request for Open Records Decision

### ORQ-72

**Requestor:** Not applicable. See Texas Gov't Code §552.301.

**Re:** Whether the Public Information Act grants the Attorney General the authority to issue a decision under section 552.306 of the Texas Government Code when, prior to the issuance of the decision, a party has brought an action before a Texas court posing the same open records question (ORQ-72)

### Briefs Requested by November 5, 2010.

*For further information, please contact the Open Records Division at (512) 936-6736.*

TRD-201005814

Jay Dyer

Deputy Attorney General

Office of the Attorney General

Filed: October 12, 2010

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## Requests for Opinion

### RQ-0921-GA

#### Requestor:

The Honorable Delwin Jones

Chair, Committee on Redistricting

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768

Re: Constitutionality of residency requirements for applicants for a license to fit and dispense hearing instruments under section 402.209, Occupations Code (RQ-0921-GA)

### Briefs requested by November 8, 2010

### RQ-0922-GA

#### Requestor:

The Honorable James M. Tirey

Hale County Attorney

500 Broadway, Suite 340

Plainview, Texas 79072

Re: Deadline for the initiation of a salary grievance proceeding by a county or precinct officer: Reconsideration of Attorney General Opinion Nos. GA-0051 (2003) and GA-0620 (2008) (RQ-0922-GA)

### Briefs requested by November 10, 2010

*For further information, please access the website at [www.oag.state.tx.us](http://www.oag.state.tx.us) or call the Opinion Committee at (512) 463-2110.*

TRD-201005816

Jay Dyer

Deputy Attorney General

Office of the Attorney General

Filed: October 12, 2010

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## Opinions

### Opinion No. GA-0808

The Honorable Stephen L. Mitchell

Culberson County Attorney

Post Office Box 276

Van Horn, Texas 79855

Re: Whether a member of the board of trustees of an independent school district may simultaneously serve as mayor of a type A general-law municipality that is located wholly within the geographical boundaries of the school district (RQ-0874-GA)

## S U M M A R Y

A member of the board of trustees of an independent school district may not simultaneously serve as mayor of a type A general-law municipality that is located wholly within the geographical boundaries of the school district.

### Opinion No. GA-0809

The Honorable Paul Johnson

Denton County Criminal District Attorney

1450 East McKinney, Suite 3100

Post Office Box 2850

Denton, Texas 76202

Re: Authority of a commissioners court to regulate traffic on roads located in an unincorporated area of the county but within the boundaries of a fresh water supply district (RQ-0876-GA)

#### **S U M M A R Y**

The Denton County Commissioners Court likely has no authority under Transportation Code section 251.016 to post speed limits, provide restricted traffic areas for school zones, install traffic control devices, and impose parking restrictions on non-county maintained public roads in subdivisions located within a fresh water supply district in an unincorporated area of Denton County. A court could, however, conclude otherwise.

The Denton County Commissioners Court has no authority under Transportation Code sections 251.151, 251.154, 251.155, 251.156, and 542.007 to post speed limits, provide restricted traffic areas for school zones, install traffic control devices, and impose parking restrictions on non-county maintained public roads in subdivisions

located within a fresh water supply district in an unincorporated area of Denton County.

A fresh water supply district has no authority under Water Code chapters 49 and 53 to post speed limits, provide restricted traffic areas for school zones, install traffic control devices, and impose parking restrictions on non-county maintained public roads in subdivisions located within the district in an unincorporated area of Denton County.

*For further information, please access the website at [www.oag.state.tx.us](http://www.oag.state.tx.us) or call the Opinion Committee at (512) 463-2110.*

TRD-201005815

Jay Dyer

Deputy Attorney General

Office of the Attorney General

Filed: October 12, 2010

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# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. ~~[Square brackets and strikethrough]~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

## TITLE 1. ADMINISTRATION

### PART 4. OFFICE OF THE SECRETARY OF STATE

#### CHAPTER 73. STATUTORY DOCUMENTS

The Office of the Secretary of State proposes to revise Chapter 73, concerning statutory documents, by amending §§73.1, 73.2, 73.11, and 73.44 and repealing §73.43. The non-substantive changes are proposed to clarify the rules, update the mailing address for the Office of the Secretary of State, provide the secretary of state's website, and remove references to specific required forms by name.

##### FISCAL NOTE

Leigh A. Joseph, Attorney in the Business and Public Filings Division of the Office of the Secretary of State, has determined that for each year of the first five years that the sections are in effect there will be no fiscal implications to state or local governments as a result of enforcing or administering the amendments and repeal as proposed.

##### PUBLIC BENEFIT AND SMALL BUSINESS COST NOTE

Ms. Joseph has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing or administering the sections as proposed will be to view the rules as corrected. There will be no effect on small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the proposed rules.

##### COMMENTS

Comments on the proposed amendments and repeal may be submitted in writing to: Leigh A. Joseph, Office of the Secretary of State, Corporations Section, P.O. Box 13697, Austin, Texas 78711-3697. Comments must be received not later than 12:00 noon, November 22, 2010.

#### SUBCHAPTER A. LABOR ORGANIZERS

##### 1 TAC §73.1, §73.2

The amendments to §73.1 and §73.2 are proposed under the authority of §101.110, Texas Labor Code, which requires the secretary of state to accept applications for and issue labor organizer's cards and §2001.004(1) of the Government Code, which requires state agencies to adopt procedural rules of practice.

Chapter 101, Texas Labor Code, is affected by the proposed amendments to §73.1 and §73.2.

*§73.1. Application.*

(a) Prior to soliciting any members for a labor union organization, any labor union organizer operating in the State of Texas shall apply for ~~[obtain]~~ an organizer's card from the Statutory Documents Section of the Office of the Secretary of State.

(b) Texas Labor Code §101.110(b) sets forth the requirements for an application for an organizer's card, including that the application must be accompanied by a copy of the applicant's credentials. "Credentials" means either:

(1) a copy of the minutes of the union meeting showing the election of the applicant as labor union organizer; or

(2) if the labor organization is organized in a jurisdiction other than Texas, notification from the labor organization of the appointment of the applicant as labor union organizer.

##### *§73.2. Application Form.*

The application form is available on the secretary of state web site at [www.sos.state.tx.us/statdoc/statforms.shtml](http://www.sos.state.tx.us/statdoc/statforms.shtml) or may be obtained by writing the Statutory Documents Section, Office of the Secretary of State, P.O. Box 13550, Austin, Texas 78711-3550. See Form 2206. [The application for an organizer's card shall be on a form to be provided by the Office of the Secretary of State. The Statutory Documents Section of the Office of the Secretary of State hereby adopts by reference the following form, "Application for Labor Organizer Card." All persons required to file an application shall use this form. Copies may be obtained by contacting the Office of the Secretary of State, Statutory Documents Section, P.O. Box 12887, Austin, Texas 78711-2887.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 11, 2010.

TRD-201005781

Lorna Wassdorf

Director, Business and Public Filings

Office of the Secretary of State

Earliest possible date of adoption: November 21, 2010

For further information, please call: (512) 463-5562



#### SUBCHAPTER B. SESSION LAWS

##### 1 TAC §73.11

##### STATUTORY AUTHORITY

The amendment to §73.11 is proposed under the authority of §2158.064, Government Code, which requires the secretary of state to direct the compilation and printing of laws and resolu-

tions and §2001.004(1) of the Government Code, which requires state agencies to adopt procedural rules of practice.

Chapter 2158, Government Code, is affected by the proposed amendment to §73.11.

*§73.11. Publication of Session Laws.*

The session laws following the conclusion of a regular and/or special session shall be published. These volumes may be obtained from the publisher. The name and address of the publisher may be obtained by contacting the Statutory Documents Section of the Office of the Secretary of State, P.O. Box 13550, Austin, Texas 78711-3550 [P.O. Box 12887, Austin, Texas 78711-2887].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 11, 2010.

TRD-201005782

Lorna Wassdorf

Director, Business and Public Filings

Office of the Secretary of State

Earliest possible date of adoption: November 21, 2010

For further information, please call: (512) 463-5562



## SUBCHAPTER D. STATEMENT OF OFFICER FORMS

### 1 TAC §73.43

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the Office of the Secretary of State or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The repeal of §73.43 is proposed under the authority of Article XVI, §1, Texas Constitution, which requires certain officers to file signed anti-bribery statements with the secretary of state and §2001.004(1) of the Government Code, which requires state agencies to adopt procedural rules of practice.

Article XVI, §1, Texas Constitution, is affected by the proposed repeal of §73.43.

*§73.43. Facsimile Transmission of a Statement of Officer Form.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 11, 2010.

TRD-201005784

Lorna Wassdorf

Director, Business and Public Filings

Office of the Secretary of State

Earliest possible date of adoption: November 21, 2010

For further information, please call: (512) 463-5562



### 1 TAC §73.44

The amendment to §73.44 is proposed under the authority of Article XVI, §1, Texas Constitution, which requires certain officers to file signed anti-bribery statements with the secretary of state and §2001.004(1) of the Government Code, which requires state agencies to adopt procedural rules of practice.

Article XVI, §1, Texas Constitution, is affected by the proposed amendment to §73.44.

*§73.44. Statement of Officer Form.*

(a) A statement of officer form containing the language required by Article XVI, §1 of the Texas Constitution is available on the secretary of state web site at [www.sos.state.tx.us/statdoc/stat-forms.shtml](http://www.sos.state.tx.us/statdoc/stat-forms.shtml) or may be obtained by writing the Statutory Documents Section, Office of the Secretary of State, P.O. Box 13550, Austin, Texas 78711-3550. See Form 2201.

(b) A statement of officer must provide:

(1) the language required by Article XVI, §1(b) of the Texas Constitution;

(2) the specific office to which the officer has been elected or appointed; and

(3) the typed or printed name and signature of the officer.

(c) In addition to other accepted methods of delivery, the statement of officer may be submitted to the secretary of state by facsimile.

[(a) The Office of the Secretary of State hereby adopts by reference the statement of officer form. A sample copy of the form may be obtained from the Office of the Secretary of State, Statutory Documents Section, P.O. Box 12887, Austin, Texas 78711-2887. A copy of the form is also available on the Secretary of State's Internet site.]

[(b) All persons required to file the statement shall use the form or a document which shall contain the following information: the constitutionally required language with the person's typed or printed name; the person's signature; the specific office elected or appointed to; and the city and county where the office is located.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 11, 2010.

TRD-201005783

Lorna Wassdorf

Director, Business and Public Filings

Office of the Secretary of State

Earliest possible date of adoption: November 21, 2010

For further information, please call: (512) 463-5562



## CHAPTER 81. ELECTIONS

### SUBCHAPTER A. VOTER REGISTRATION

#### 1 TAC §§81.11 - 81.17, 81.19 - 81.28

The Office of the Secretary of State (SOS) proposes amendments to §§81.11 - 81.17 and 81.19 - 81.28 concerning disbursement of funds under the Election Code, Chapter 19. These rules designate which goods and services are reimbursable with Chapter 19 funds and outline procedures to be followed by county voter registrars to obtain such reimbursement.

Sections 81.11, 81.12, 81.17, 81.19, 81.20, 81.22, and 81.25 - 81.28 organize, update, and clarify existing language but do not result in significant changes.

The following sections contain more substantive amendments:

- Section 81.13 requires that all Chapter 19 submissions include a certification that the Commissioners Court did not consider the availability of Chapter 19 funds in adopting the county budget for the office of voter registrar. In addition, the SOS will not require prior approvals unless the county requests a prior approval.

- Section 81.14 clarifies what constitutes "normal day-to-day operations" of the voter registrar's office. Equipment leases as well as repair and warranty of equipment funded with Chapter 19 funds are now eligible expenses. In addition, paper shredders are now an eligible expense to properly dispose of the source documents because of the increase in the scanning of voter registration documents.

- Section 81.15 extends the deadline to submit Chapter 19 funding requests from 30 days to six months from the county payment date to the vendor, except for travel reimbursement which remains 30 days from the completion of travel.

- Section 81.16 and §81.21 describe how supporting documentation does not need to be submitted at the time of the reimbursement requests but must be maintained at the county level for post-payment review based on a schedule established by the SOS.

- Section 81.23(a) and §81.24 clarify that travel as well as membership dues may be reimbursed at 100% if the purpose of the travel or the group or association benefits voter registration efforts. In addition, §81.23 has been amended to no longer allow for travel advances.

These rules take effect when the Chapter 19 electronic web-based application described in §81.16 is deployed for official county use, which is projected to be January 1, 2011.

Ann McGeehan, Director of Elections, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering them.

Ms. McGeehan has also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing them will be a better use of the Chapter 19 funds and a more efficient reimbursement processing procedure. There will be no effect on small businesses. There is no anticipated economic cost to the voter registrars.

Comments on these proposed rules may be submitted to the Office of the Secretary of State, Dan Glotzer, Elections Funds Management, P.O. Box 12060, Austin, Texas 78711. Comments must be received by SOS no later than 5:00 p.m. November 17, 2010.

The amendments are proposed under the Election Code, §31.003 and §19.002(b), which provides the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Election Code and other election laws, and in performing such duties, to prepare detailed and comprehensive written directives and instructions based on such laws, and to adopt rules consistent with the Election Code.

The Election Code, Chapter 19, §19.002(b) is affected by these proposed amendments.

#### *§81.11. Definitions.*

The following words and terms, when used herein, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Agency--The Office of the Secretary of State.

(2) Chapter 19--Texas Election Code Annotated, Chapter 19 (Vernon 2003 and Supplement 2004-2005).

(3) Chapter 19 funds--Funding available to a county voter registrar pursuant to Texas Election Code Annotated, §19.002 (Vernon 2003 and Supplement 2004-2005).

~~[(4) HAVA (Help America Vote Act)--42 U.S.C. §15301, Texas Election Code Annotated, §31.010, §19.004(d) (Vernon 2003).]~~

~~[(5) Mileage Guide--Electronic Official State Mileage Guide adopted by the Comptroller of Public Accounts.]~~

(4) ~~[(6)]~~ NVRA (National Voter Registration Act)--42 U.S.C. §1973 et seq., Texas Election Code Annotated, §19.004, §31.007 (Vernon 2003).

(5) ~~[(7)]~~ Rule--A rule adopted under Chapter 81 of the Texas Administrative Code, Title 1.

(6) ~~[(8)]~~ Section--A section of Texas Election Code Annotated (Vernon 2003 and Supplemental 2004-2005).

(7) State Fiscal Year--September 1 through August 31.

(8) Texttravel--Guide issued by the Comptroller of Public Accounts providing information on state travel laws and rules to state agencies.

~~[(9) Travel Guide--State of Texas Travel Allowance Guide issued by the Comptroller of Public Accounts.]~~

#### *§81.12. Applicable Sections of the Texas Election Code.*

(a) Chapter 19 provides, in pertinent part, as follows:

(1) The Commissioners Court may not consider the availability of state funds under this chapter in adopting the county budget for the office of voter registrar (§19.006);

(2) State funds disbursed under this chapter may be used only to defray expenses of the voter registrar's office in connection with voter registration (§19.004).

(b) The Secretary of State has interpreted §19.006 to mean that the county must provide for the normal operation of the voter registrar's office as defined in §81.14 of this title (relating to Normal Day-To-Day Operation--Defined). The Secretary of State has interpreted §19.004 to mean that Chapter 19 funds shall be expended on items intended to be used exclusively for voter registration. If an item purchased or service rendered is not exclusively related to voter registration, the cost must be prorated.

#### *§81.13. Allowable Uses of Chapter 19 Funds.*

(a) Chapter 19 funds expenditures ~~[which]~~ must comply with the criteria of "reasonable and necessary~~[;]~~" as established by Uniform Grant Management Standards (UGMS)~~[;]~~ and may only be used ~~[to pay]~~ for the following activities: ~~[activity designed to]~~

(1) Increase ~~[increase]~~ the number of registered voters in the state.~~[;]~~

(2) Maintain ~~[maintain]~~ and report an accurate list of the number of registered voters.~~[; and/or]~~

(3) Increase ~~[increase]~~ the efficiency of the voter registration office through the use of technological equipment.

(b) All Chapter 19 funding requests submitted to the Agency must identify [state] which of these purposes the requested item(s) will benefit [further].

(c) All Chapter 19 requests must include a certification that the Commissioners Court did not consider the availability of Chapter 19 funds in adopting the county budget for the office of voter registrar.

(d) If there is a question regarding whether an item or service is payable from Chapter 19 funds, the Agency will review the eligibility prior to the purchase upon request by the county. [a written request should be submitted to the Agency detailing the estimated cost, projected payment date, purpose of item or service and how it relates to the aforesaid purposes. The Agency will respond to this request in writing within 14 business days.]

*§81.14. Normal Day-To-Day Operation--Defined.*

(a) Consistent with the intent of §81.12 of this title (relating to Applicable Sections of the Texas Election Code) Chapter 19 funds may not be used to fund the normal day-to-day operation of the voter registrar's office, which include statutory duties required by the Election Code and general office operating costs.

(b) The normal day-to-day operation of the voter registrar's office must be funded by the Commissioners Court when adopting the budget for voter registration in their county. ["Normal day-to-day operation" that must be funded by the county means any duty]

(1) Duties required to be performed by counties under the Texas Election Code~~[- Examples of such statutory duties]~~ include~~[-]~~ but are not limited to the following~~[-]~~:

(A) The [the] physical acceptance and processing of voter registration certificates and renewals under Chapter 13~~[-]~~

(B) Notices ~~[noticees]~~ and corrections made under Chapter 15 and Chapter 16. [and]

(C) The [the] processing and cost of supplying voter lists under §18.001. [Examples of specific items which]

(2) General office operating costs that are considered expenses incurred in the normal day-to-day operation of voter registrars' offices and not payable with Chapter 19 funds include[-] but are not limited to the following~~[-]~~:

(A) Office [office] furniture, including file cabinets~~[-]~~

(B) Office [office] supplies~~[-]~~, paper shredders, equipment leases~~[-]~~

(C) Any [any] phone line not dedicated to a computer modem~~[-]~~, the repair and warranty of office equipment~~[-]~~

(D) Printing [printing] of voter registration cards~~[-]~~ and]

(E) Normal [normal] postage costs.

(c) The Agency has the sole authority to determine whether a requested item or service is a day-to-day expense and thus not payable with Chapter 19 funds.

*§81.15. Funding Period.*

(a) After June 1 of each year funding becomes available to the counties as defined in §19.002 of the Election Code and remains available for 27 months, expiring on August 31.

(b) Except for travel reimbursement requests, Chapter 19 funding requests must be received within six (6) months [30 days] of payment to vendor.

(c) Travel expense reimbursement requests must be submitted within 30 days of the completion of travel. [Temporary employee

funding requests may not cover longer than a four (4) consecutive week period.]

*§81.16. Electronic Submission of Chapter 19 Purchase Request Required for Payment.*

(a) The Agency shall prescribe an electronic web-based application format for the submission of Chapter 19 Purchase Request for use by each county voter registrar. [In addition to any supporting documentation required by this chapter, the voter registrar must submit a signed facsimile or signed scanned image of the supporting documentation via attachment to the electronic submission.]

(b) If a Chapter 19 Purchase Request is received by the Agency seeking funding which is not allowable under the Texas Election Code, Chapter 19, these rules, and Agency directives, the Agency shall so notify the voter registrar [within 14 business days] of receipt of such form via email, written notification or election response from the web-based system.

(c) All electronic requests must be submitted through the designated secured electronic web-based application designed solely for Chapter 19 purchases, located on the Office of the Secretary of State web site. [Facsimile supporting documentation received after 5:00 p.m. will be considered to be received on the next business day.]

(d) All supporting documentation must be maintained in accordance with §81.21 of this title (relating to the Records Maintenance and Payment Reviews).

*§81.17. Competitive Bidding Required.*

Except for the purchase of voter registration advertising~~[-]~~ and temporary staff the voter registrar shall submit bids for the purchase of items or services to be paid for with Chapter 19 funds according to the following guidelines:

(1) No competitive bids for individual purchases of less than \$5,000 ~~[\$2,000]~~ are required. However, the voter registrar shall take the steps necessary to insure that all charges are reasonable and competitive relative to the local market. (Note: A large purchase may not be divided into small lot purchases to circumvent the dollar limits established by this section. For example, expenditures for computer equipment to a single vendor that total more than \$5,000 ~~[\$2,000]~~ are subject to the competitive bid requirement and may not be split between printers/scanner/computers.)

(2) For purchases of \$5,000 or more, competitive bidding procedures must be followed. Generally, a county must receive a minimum of [Request for funding for individual purchases of \$2,000 but less than \$10,000 must be accompanied by] three written bids from three different vendors stating the vendor's name, complete mailing address, telephone number, and the amount of the bid. A copy of the bids as well as the selection documentation, including the solicitation and the scoring tools, must be maintained by the county and made available to the Agency upon request. [Copies of all bids received will be forwarded to the Agency as an attachment with the electronic submission. In instances when the specifications on the lowest bid are unacceptable, a signed letter by the voter registrar must accompany stating the reason specifications on the lowest bid does not meet your needs.]

(3) If a purchase is through the Texas Procurement and Support Services (TPASS) cooperative purchasing programs for state contract purchasing for the State of Texas, bids are not required. Proper documentations must be submitted to indicate the type of procurement service used and the source for those services.

~~[(3) Any request for funding for a purchase of \$10,000 or greater must have received the prior written approval of the Agency. Upon receipt of such approval, the voter registrar will advertise for bids in the manner dictated by county regulations. Copies of all bids~~

received will be forwarded to the Agency as an attachment with the electronic submission.}]

~~[(4)]~~ If a purchase is handled by a county's purchasing department, the voter registrar may use county purchasing guidelines instead of those set by paragraphs (1) and (2) of this section. However, a copy of the bids, if applicable per your county, a copy of the county guidelines and signed recommendation of the county purchasing department must be submitted with the Chapter 19 Purchase Request.}]

(4) ~~[(5)]~~ Sole source vendor purchases and situations when the lowest bid is not accepted are discouraged. In rare instances when this type of purchase is required, a justification must be signed by the county purchasing authority and be made available to the Agency upon request. [a waiver request, stating a justification, must be submitted and signed by the voter registrar. If the item purchased is greater than \$2,000, the waiver request must also be signed by the person responsible for county purchases. Only when a sole source vendor purchase or the acceptance of a bid higher than the lowest bid is required by county guidelines may such purchases be reimbursed with Chapter 19 funds and then, only upon receipt of the waiver request described herein above.]

#### *§81.19. Method of Payment.*

(a) All [Except for travel advances provided by §81.23 of this title (relating to Travel Using Chapter 19 Funds Authorized), all] payments made from Chapter 19 funds will be issued on a reimbursement basis. [An invoice from the vendor and a copy of the county paid voucher, ledger or bank statement must be submitted with all Chapter 19 Purchase Requests. The signed timesheet required by §81.22 of this title (relating to Use of Chapter 19 Funds for Temporary Employees) will be considered a "vendor's invoice" for purposes of this rule.]

(b) Payments issued by the Comptroller of Public Accounts will be payable to the county, in the form of direct deposit to a new or pre-existing bank account as directed by the voter registrar.

(1) If the county establishes a new account, the county must budget funds to cover all setup fees, check orders and/or service charges associated with opening and maintaining the new account. Chapter 19 funds will not incur any fees or service charges associated with the setting up of a new account. Please note: our office encourages the county to use an existing account and develop a separate fund. Whether a separate Chapter 19 fund is created in an existing account or a separate account is established, it will be the county's responsibility to maintain a separate bookkeeping system to identify the debits and credits relating to all activities from the receipt of Chapter 19 funds.

(2) The county voter registrar will use such account for the purpose of depositing and/or expending Chapter 19 funds.

(3) The voter registrar shall not commingle Chapter 19 fund ledger accounts with any other county fund ledger account. [The voter registrar shall complete fund reconciliations on a monthly basis. Fund general ledgers or activity statements must be provided to the Agency semiannually and are considered part of the Chapter 19 fund records and must be available if requested by the Office of the Secretary of State for audit purposes.]

(4) Except for travel expenses authorized by §81.23 of this title (relating to Travel Using Chapter 19 Funds Authorized), no cash payments may be made from Chapter 19 funds. All disbursement payments of Chapter 19 funds must be made by check or state transfer drawn on the Chapter 19 prescribed bank account as described above. [Please be advised, whether the accounts are combined with an existing account or separate accounts are established, it will be the county voter registrar's legal responsibility to maintain a separate bookkeeping sys-

tem to identify the debits and credits relating to all activities from the receipt of Chapter 19 Funds.}]

#### *§81.20. Ownership of Equipment Purchased with Chapter 19 Funds.*

(a) Items and equipment purchased with Chapter 19 funds are the property of the county.

(b) The county is responsible for the maintenance and repair of such items and equipment.

(c) If items or equipment that were originally purchased with Chapter 19 funds are no longer needed or useful for voter registration purposes, the items or equipment may be transferred, with the voter registrar's approval, to other county uses.

(d) If the items or equipment are no longer needed by the county, they may be disposed of in the manner set by county guidelines.

(e) Proceeds received from the sale of items or equipment purchased with Chapter 19 funds may be used only for voter registration purposes in a manner consistent with these rules.

#### *§81.21. Records Maintenance and Payment Reviews [The Voter Registrar is Required to Print Semiannual Reports].*

(a) All supporting documentation must be maintained at the county level and made available to the Agency upon request for three (3) state fiscal years after the fiscal year in which the funding lapses. [The County will be provided with reporting capabilities to access, process and print reports semiannually for each voter registrar and each county financial officer reflecting the activity and available balances in each county's Chapter 19 fund account. The voter registrar will promptly notify the Agency if discrepancies are noted between the records of the voter registrar and such semiannual report.]

(b) Supporting documentation that must be maintained by the county includes but is not limited to the following documents:

(1) Invoices from the vendor and a copy of the county paid voucher, ledger or bank statement substantiating the payment. The signed timesheet required by §81.22 of this title (relating to Use of Chapter 19 Funds for Temporary Employees) will be considered a "vendor's invoice" for purposes of this rule.

(2) All procurement documentation including the solicitation, bids, scoring documents, selection criteria, sole source or best value justification, if applicable, and any other relevant records.

(3) Any documents relating to Chapter 19 requests.

(c) The Agency will develop and notify the counties of the review schedule for Chapter 19 payments.

(1) The schedule will identify the periods of review, e.g., quarterly, semiannually, or annually.

(2) A risk assessment may be developed by the Agency to determine a sampling of counties subject to review.

(3) Corrections resulting from reviews will be assessed against subsequent Chapter 19 reimbursement(s).

#### *§81.22. Use of Chapter 19 Funds for Temporary Employees.*

The Commissioners Court must budget for the adequate staffing of the voter registrar's office. Chapter 19 funds may be used for temporary personnel when exigent circumstance arise beyond the staffing resources budgeted by the Commissioners Court. [In those instances when an unpredicted and unpredictable workload cannot be handled by the permanent voter registration staff, the Agency may approve, on a case-by-case basis, the use of Chapter 19 funds for the employment of temporary personnel in the voter registration office. In order to receive reimbursement through Chapter 19 funds for temporary staff, the

voter registrar must submit an electronic transmission of the Chapter 19 Request, with attached timesheet signed by both the temporary employee and his/her supervisor. A prior approved description of duties performed by the temporary employee(s) must be on file with the Office of the Secretary of State. These temporary personnel may be used only for special projects related to voter registration and not for the replacement of permanent full-time or part-time employees.]

(1) Permanent full-time and part-time county employees may not be compensated with Chapter 19 funds. The voter registrar may have Chapter 19 funded temporary staffing a maximum of any 39 [26] weeks out of the 52-week state fiscal year (September 1 through August 31). For example, if Employee A works one week and Employee B works the next week, the county is allowed only 37 [24] more weeks of Chapter 19 funded temporary personnel. However, if the county employs 15 temporaries in the same week, this would count as only one week of the 39 [26]-week allowance. For tracking purposes, working one day of one week counts the same as working an entire week. For example, if Employee C works Monday only, it will count as one week of the 39 [26]-week Chapter 19 allowance.

(2) The Agency does not issue tax forms to temporary employees funded with Chapter 19 funds. For this reason, the Agency recommends that temporary employment agencies be used if available.

(3) The voter registrar should discuss the tax implications of using temporary personnel with the county auditor.

(4) The fee or rate of pay to be paid to temporary employees must reflect the fee or rate prevailing in the locale for the same or similar services.

(5) Work related injuries to temporary personnel hired with Chapter 19 funds are not the liability of the Agency.

#### *§81.23. Travel Using Chapter 19 Funds Authorized.*

(a) Chapter 19 funds may be used to pay travel expenses incurred by the voter registrar and full-time permanent voter registration staffers to attend voter registration and/or election administration seminars and demonstrations that directly advance voter registration efforts. [Chapter 19 funds cannot be used to reimburse fully a trip by the voter registrar, unless the purpose of the trip is exclusively related to voter registration. If a voter registrar wishes to travel to a seminar or meeting in which voter registration is not the only topic, the Agency will determine the appropriate portion of the trip expenses that are reimbursable pursuant to Chapter 19 and reimburse the registrar accordingly.]

(b) All voter registrars who seek reimbursement from Chapter 19 funds should plan their travel to achieve maximum economy and efficient means of transportation. [Hotel shuttles are preferred over taxis and taxis are preferred over rental cars. A comparison should be made between different modes of travel for the lowest and most economical option. All trips which include reimbursable travel must receive prior written approval from the Agency. An electronic travel request through the web-based application must state the purpose of the trip, itinerary, mode of transportation, and estimated expenses. A Chapter 19 Electronic Travel Request, prescribed by the Agency and Chapter 19 Purchase Request must be submitted for each traveler within 30 days of the completion of travel. Travel reimbursement requests must include attached receipts for airfare, rental cars, lodging, seminar registration fees, and miscellaneous expenses. Chapter 19 funds will not cover expenses for first class accommodations, tips, valet parking or alcohol. Travel advances will be approved, on a case-by-case basis. Travel advance funding will not be made for meals, hotel taxes or miscellaneous expenses. Travel advance requests must be submitted through the web-based application in the form of a travel request and include a Chapter 19 Purchase Request for each traveler. No further Chapter 19

Purchase Request will be processed until the final accounting of any advanced travel is received.]

(c) The following limitations apply to Chapter 19 travel:

(1) The lowest available rates and fares shall be utilized.

(2) Reimbursements will be made based on actual costs.

(3) Lodging, per diem, and mileage rates may not exceed those set by the Texas Comptroller of Public Accounts.

(4) Reimbursements for lodging, per diem (including partial per diem), and mileage rates may not be charged to Chapter 19 unless the employee conducts travel beyond 25 miles of his or her designated headquarters.

(5) Travel by personal car is reimbursable at the rate set by the Texas Comptroller of Public Accounts per mile with mileage computed using the originating county seat as the departure point and computing final mileage using the mapping tool on the Chapter 19 web-based application.

(6) If more than one person is traveling from the same headquarters to the same destination, the travelers are to ride together in a single automobile if practicable.

(7) The rental of luxury cars will be disallowed, except in special circumstances requiring the use of large cars, i.e., several employees are traveling together or large volumes of equipment or supplies are being transported.

(8) Chapter 19 funds will not cover expenses for first class accommodations, tips, gratuities, valet parking or alcoholic beverages.

(d) Chapter 19 travel reimbursements must be submitted for each traveler within 30 days of the completion of travel via the Chapter 19 web-based application.

(e) Travel reimbursement requests must include the itemized amounts for airfare, rental cars, mileage, meals, lodging, seminar registration fees, and miscellaneous expenses. All receipts must be maintained in accordance with §81.21 of this title (relating to Records Maintenance and Payment Reviews).

[(e) Chapter 19 travelers must obtain the lowest cost airfare. Under no circumstances will the amount of a first class ticket be paid with Chapter 19 funds. Voter registrars are to share rental cars whenever practicable. The Agency must give prior approval for the use of a rental car and the voter registrar must make a proper deduction or reimbursement whenever there is personal use of a rental car. The rental of luxury cars will be disallowed, except in special circumstances requiring the use of large cars, i.e., several employees traveling together. Travel by personal car is reimbursable at the rate set in the State of Texas Travel Allowance Guide (the "Guide") per mile with mileage computed using the originating county seat as the departure point and computing final mileage using the Official State Mileage Guide. Travel by personal car is reimbursable as long as it is less than airfare to the same destination. If more than one person is traveling to the same destination by personally owned automobile, the travelers are to ride together in a single automobile if practicable. Overnight lodging is not covered if destination is less than 70 to 100 miles. Rental cars are not an allowable expense when flying to destination city and staying at the host hotel. Note: County procedures will supersede Chapter 19 rules regarding travel advances.]

[(d) Voter registrars who seek reimbursement from Chapter 19 funds for a trip with a final destination within Texas will receive the actual cost of lodging and meals; but such rates may not exceed the rates set by the Guide. Voter registrars who seek reimbursement from Chapter 19 funds for a trip with a final destination outside Texas will receive

the actual cost of lodging and meals not to exceed the out-of-state meals and lodging rates set by the Comptroller of Public Accounts for that location. The out-of-state rate for a city is available from the Comptroller of Public Accounts or the Agency. The voter registrar must be away from his or her home county for at least six consecutive hours to qualify for the partial per diem allowed by the Guide. When requesting Chapter 19 reimbursement, the voter registrar must submit receipts for lodging, airfare, and miscellaneous expenses with the electronic submission of the Chapter 19 Purchase and Travel Request. Amounts in excess of the maximum amounts allowed by the Travel Guide will not be reimbursed. A Meal Itemization Worksheet, prescribed by the Agency, must be entered showing actual costs of meals and signed by each traveler requesting reimbursement as an attachment to your electronic submission. Receipts for such meal costs are not required to be attached, but should be retained by the traveler in the event of a state audit. Texas Government Code, §2113.101, prohibits reimbursement for the purchase of alcoholic beverages, gratuities, and tips.]

#### *§81.24. Membership Dues Detailed.*

Membership dues to groups or associations are payable with Chapter 19 funds only if the group's or association's activities or mission directly involve voter registration. [voter registration and/or election administration is the purpose of the group or association.]

#### *§81.25. Voter Registration Drives Encouraged.*

(a) Pursuant to §81.12 of this title (relating to Applicable Sections of the Texas Election Code), efforts to increase the number of registered voters in the county are payable with Chapter 19 funds.

(b) Voter registration drive efforts include[.] but are not limited to[.] mailouts of applications to households, insertion of applications into newspapers, distributing applications at public locations, and other forms of advertising.

(c) "Promotional items" are not payable with Chapter 19 funds. Examples of non-payable promotional items include[.] but are not limited to memorabilia, models, gifts, souvenirs[.] hats, drink coolers, t-shirts, weepuls, pens, pencils, jackets, frisbees, emery boards, fans, dominoes, windshield shades, change purses], and other such novelties or items of nominal value. Items purchased with Chapter 19 funds may include only the county and title of the voter registrar's office.

(d) Names of specific individuals may not be included on such materials. Chapter 19 funded voter registration drives must not promote a particular party, candidate, or issue. Chapter 19 funds may not be used for food and drink purchases, except for travel expenses allowed under §81.23 of this title (relating to Travel Using Chapter 19 Funds Authorized).

#### *§81.26. Technology Purchases Encouraged.*

(a) Chapter 19 funds may be used for the purchase and initial installation of technological improvements for the voter registration office.

(b) "Technological improvements" include[.] but are not limited to[.] computer hardware, printers, and computer training. Computer programs and software that are necessary for the operation of the voter registration office are payable with Chapter 19 funds. [However, as stated in]

(c) Pursuant to §81.22 of this title (relating to Chapter 19 Funds for Temporary Employees), the county may not be reimbursed for the compensation of full or part-time county employees and programmers.

(d) The cost of providing the information required by §18.063 of the Texas Election Code is specifically payable with Chapter 19 funds.

(e) Pursuant to §81.20 of this title (relating to Ownership of Equipment Purchased with Chapter 19 Funds), the upkeep and maintenance of items purchased with Chapter 19 funds is the responsibility of the county.

(f) Pursuant to §81.12 of this title (relating to Applicable Sections of the Texas Election Code), the voter registrar must prorate the cost between the county and Chapter 19 funds, if the purchased item is not entirely related to voter registration.

#### *§81.27. Electronic Office Equipment Purchases Encouraged.*

(a) Chapter 19 funds may be used for the purchase of electronic office equipment.

(1) Examples of "electronic office equipment" include[.] but are not limited to[.] copiers, fax machines, optical imaging systems, electronic retriever file systems and typewriters.

(2) Examples of office equipment that are considered general voter registration office operating expenses and not payable with Chapter 19 funds pursuant to §81.14 of this title (relating to Normal Day-To-Day Operation--Defined) include but are not limited to office furniture such as desks, chairs and file cabinets. [Office furniture is required for the normal day-to-day operation of the voter registrar's office, and accordingly, is not payable with Chapter 19 funds. Examples of such office furniture include, but are not limited to, desks, chairs and file cabinets.]

(b) Pursuant to §81.20 of this title (relating to Ownership of Equipment Purchased with Chapter 19 Funds), the upkeep and maintenance of items purchased with Chapter 19 funds is the responsibility of the county.

(c) Pursuant to §81.12 of this title (relating to Applicable Sections of the Texas Election Code), the voter registrar must prorate the cost between the county and Chapter 19 funds if the purchased item is not entirely related to voter registration.

#### *§81.28. NVRA--Expenses Payable.*

The NVRA amends the Texas Election Code, §19.004, to allow expenses incurred by the voter registrar in implementing and conducting the duties required by this act to be payable with Chapter 19 funds. Examples of payable expenses under the NVRA include[.] but are not limited to[.] computer programming changes required by §15.081 and the printing and mailing of confirmation notices required by §§13.146, 14.023, 16.0921.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 11, 2010.

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John Sepehri

General Counsel

Office of the Secretary of State

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For further information, please call: (512) 463-5650



## PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES  
SUBCHAPTER A. PURCHASED HEALTH SERVICES  
DIVISION 34. OUT-OF-STATE SERVICES

**1 TAC §354.1440, §354.1442**

The Texas Health and Human Services Commission (HHSC) proposes two new rules in new Division 34, Out-of-State Services, within Title 1, Part 15, Chapter 354, Subchapter A. HHSC proposes new §354.1440, concerning Medical Care or Services Provided to Medicaid Recipients Outside of Texas, and new §354.1442, concerning Out-of-State Provider Eligibility.

**Background and Justification**

HHSC proposes new §354.1440 related to medical care or services provided to eligible Texas Medicaid recipients while absent from Texas. Currently, this information is located in Title 1, Part 15, Chapter 355, Subchapter J, Division 5, §355.8083. However, Chapter 355 covers Medicaid reimbursement rather than program policy. HHSC is proposing to repeal §355.8083 concurrently with this proposal and move the information to new §354.1440.

In addition, HHSC proposes new §354.1442, which defines the criteria that must be met by a provider located outside the Texas border to enroll in the Texas Medicaid program and provide services to Texas Medicaid recipients within the state of Texas or while they are absent from Texas. The addition of this new rule is consistent with the current policy and procedures the state uses when determining if an out-of-state provider meets the criteria for enrollment in the Texas Medicaid program. The new rule will refer to Chapter 355 regarding the reimbursement rates paid to out-of-state providers.

The repeal of the existing rule and addition of the new rules are designed to strengthen the Medicaid rules regarding services provided to eligible Texas Medicaid recipients by out-of-state providers.

**Section-by-Section Summary**

**Section 354.1440 - Medical Care or Services Provided to Medicaid Recipients Outside of Texas**

Proposed §354.1440 describes coverage of medical care and services provided outside of Texas for recipients in the Texas Medicaid program.

Proposed subsection (a) describes the criteria under which services provided to an eligible Texas recipient outside Texas may be covered.

Proposed subsection (b) specifies that prior authorization must be obtained for services furnished outside of Texas before the services are rendered unless one of the criteria described in subsection (a) is met.

Proposed subsection (c) indicates that HHSC or its designee will determine the basis and amount of reimbursement for Medicaid services provided outside Texas and within the United States in accordance with Chapter 355.

**Section 354.1442 - Out-of-State Provider Enrollment**

Proposed §354.1442 sets out the definition of an out-of-state provider and the requirements for an out-of-state provider that seeks to enroll in the Texas Medicaid program.

Proposed subsection (a) defines an out-of-state provider. A provider is considered an out-of-state provider if: (1) the physical address where services are rendered is located outside Texas and within the United States; (2) the physical address where services or products originate is located outside Texas and within the United States when providing services or products to the recipient in Texas; or (3) the physical address where services are rendered is located in Texas, but the provider maintains patient records, billing records, or both only outside Texas, and the provider is unable to produce those records from the Texas location.

Proposed subsection (b) indicates that out-of-state providers defined under subsection (a) are ineligible to participate in Texas Medicaid unless they meet one of the criteria listed in paragraphs (1) - (7). For providers who meet one of the criteria, enrollment is time-limited for an appropriate period as determined by HHSC or its designee.

Proposed subsection (c) specifies that providers must include documentation to support that they meet one or more of the criteria in subsection (b).

Proposed subsection (d) indicates that the provider must meet all applicable enrollment eligibility requirements, including those specified in Chapter 371 (relating to Medicaid and Other Health and Human Services Fraud and Abuse Program Integrity).

Proposed subsection (e)(1) indicates that providers who are enrolled pursuant to subsections (b), (c), and (d) must follow all other applicable program participation requirements identified by HHSC or its designee for each service provided, including, but not limited to, documentation procedures, obtaining prior authorization, and claims filing deadlines.

Proposed subsection (e)(2) sets out certain out-of-state providers that are not extended the 365-day claims filing deadline described in §354.1003(a)(5)(H). Those providers must file claims within the same deadlines as in-state providers under §354.1003.

Proposed subsection (f) specifies that out-of-state providers enrolled pursuant to subsections (b), (c), and (d) must comply with the terms of the Medicaid provider agreement; provide services in compliance with all applicable federal, state, and local laws and regulations related to licensure and certification in the state where the out-of-state provider is located; and comply with all state and federal laws and regulations related to Medicaid.

Proposed subsection (g) indicates that HHSC or its designee will determine the basis and amount of reimbursement for medical services provided outside Texas in accordance with Chapter 355 of this title (relating to Reimbursement Rates).

**Fiscal Note**

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first 5-year period the proposed new rules are in effect, there will be no fiscal impact to state government. The proposed new rules will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

**Small and Micro-business Impact Analysis**



Ms. Rymal has also determined that there will be an effect on small businesses or micro businesses to comply with the proposed new rules as they will be required to alter their business practices as a result of the rules. There are anticipated economic costs to persons who are required to comply with the rules. There is no anticipated negative impact on local employment.

Currently, providers located 200 miles or less from the Texas border who are enrolled in Texas Medicaid are considered border-state providers and follow the same rules and guidelines as in-state providers regarding claims filing deadlines and period of enrollment. However, under the proposed new rules, only providers located 50 miles or less from the Texas border would be considered border-state providers. Therefore, providers located 51 to 200 miles from the Texas border may be affected by these proposed new rules. Those providers may be subject to different claims filing deadlines and a more limited enrollment period.

Once the rules become effective, all enrolled providers located 51 to 200 miles from the Texas border will be notified of the criteria they will have to meet as out-of-state providers. These providers will be required to submit documentation supporting that they meet one or more of the out-of-state provider criteria in the new rule. Providers who do not meet the criteria or who do not respond and provide supporting documentation will be disenrolled.

Small or micro-businesses may be impacted if they are currently enrolled in Texas Medicaid, are located 51 to 200 miles from the Texas border, and do not meet one of the criteria in the rule. These providers will be impacted because they will be disenrolled.

The current rule does not specify the distance from the Texas border that providers located outside Texas can be located in order to be considered border-state providers. A policy was implemented in June 1989 that allowed for out-of-state inpatient hospitals located 200 miles or less from the Texas border to be considered border-state providers. After that time, the 200-mile limit was applied to all types of providers.

Three options were considered to clearly specify which providers are considered border-state providers:

1. HHSC could continue the current policy of considering providers located 200 miles outside the Texas border as border-state providers. Providers located 201 miles or more from the border could enroll only if they meet one of the other criteria defined in the new rule.
2. The rule could be changed to prevent any providers located outside the Texas border from being considered border-state providers. Any providers located outside the Texas border would have to meet one of the other criteria defined in the new rule.
3. The 200-mile limit could be reduced to 100 miles. Therefore, providers located 100 miles or less from the Texas border would be considered border-state providers, and providers located 101 miles or more from the border could enroll only if they meet one of the other criteria defined in the new rule.

Medicaid programs in other states and the Texas Medicaid Children with Special Health Care Needs program consider providers located 50 miles or less from the border as border-state providers. Also, it is unlikely that Texas Medicaid recipients would ordinarily use medical resources across the state border as a "customary or general practice" when their travel distance exceeds 50 miles. Therefore, staff developed

this rule to allow providers located outside the Texas border but with a physical address located 50 miles or less from the Texas border to be considered border-state providers. Providers located 51 miles or more from the Texas border may enroll only if they meet one of the other criteria defined in the new rule.

#### Public Benefit

Billy Millwee, Associate Commissioner for Medicaid and CHIP, has determined that for each year of the first five years the rules are in effect, the public will benefit from the adoption of the rules. The anticipated public benefit of enforcing the proposed new rules is the rules will align with current practice that is being utilized to enroll out-of-state providers who meet one of the criteria defined in the rules, including providers located 50 miles or less from the Texas border. Additionally, the proposed new rules will ensure that the HHSC Office of Inspector General has access to more provider records for purposes of investigating claims of fraud, waste, and abuse.

#### Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

#### Public Comment

Written comments on the proposal may be submitted to Ryan Keyser, Senior Policy Analyst in the Medicaid/CHIP Division, 12365A Riata Trace Pkwy (Bldg 9), Austin, TX 78727; by fax to (512) 249-3707; or by e-mail to [ryan.keyser@hhsc.state.tx.us](mailto:ryan.keyser@hhsc.state.tx.us) within 30 days of publication of this proposal in the *Texas Register*.

#### Public Hearing

A public hearing is scheduled for November 4, 2010 from 11:00 a.m. to 12:00 p.m. (central time) in the Health and Human Services Braker Center, Lone Star Conference Room, located at 11209 Metric Boulevard, Building H, Austin, Texas. Persons requiring further information, special assistance, or accommodations should contact Leigh A. Van Kirk at (512) 491-2813.

#### Statutory Authority

The new rules are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed new rules affect Texas Human Resources Code Chapter 32, and Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§354.1440. Medical Care or Services Provided to Medicaid Recipients Outside of Texas.

(a) Subject to certain conditions, limitations, and exclusions, the Texas Medicaid program covers medical assistance services provided to an eligible Texas recipient while away from Texas in another state if the recipient does not leave Texas for the purpose of receiving out-of-state medical care that the recipient can receive in Texas. Services provided outside of Texas but within the United States are covered to the same extent they are covered in Texas when:

(1) the medical services are needed because of a medical emergency documented by the attending physician or other provider;

(2) the services are medically necessary, and, in the opinion of the attending physician or other provider, the recipient's health would be endangered if the recipient were required to travel to Texas;

(3) HHSC or its designee determines that the medically necessary services are more readily available in the state where the recipient is located;

(4) the customary or general practice for recipients in a particular locality within Texas is to use medical resources in the other state; or

(5) the Texas Department of Family and Protective Services makes Title IV-E adoption assistance or Title IV-E foster care maintenance payments to an out-of-state provider for a child who is also eligible for Texas medical assistance benefits.

(b) Except as provided in subsection (a) of this section or otherwise specified by the Texas Health and Human Services Commission (HHSC) or its designee, the Texas Medicaid program does not pay for medical care and services furnished outside Texas unless prior authorization is obtained from HHSC or its designee. Prior authorization is required for utilization control and to ensure the appropriate use of medical resources. Prior authorization may be obtained by submitting medical justification or documentation to HHSC or its designee indicating the reason the recipient must obtain medical care outside Texas. Prior authorization must be obtained before providing the medical care or service.

(c) HHSC or its designee determines the basis and amount of reimbursement for medical services provided outside Texas but within the United States in accordance with Chapter 355 of this title (relating to Reimbursement Rates).

§354.1442. Out-of-State Provider Eligibility.

(a) A provider is considered an out-of-state provider when:

(1) the physical address where services are rendered is located outside the Texas state border and within the United States;

(2) the physical address where the services or products originate is located outside the Texas state border and within the United States when providing services or products to the Medicaid recipient in the state of Texas, e.g., durable medical equipment and supplies; or

(3) the physical address where services are rendered is located within the state of Texas, but the provider maintains patient records, billing records, or both only outside the Texas state border and the provider is unable to produce the originals or exact copies of the patient records, billing records, or both from the location within the state of Texas where services are rendered.

(b) Providers that are considered out-of-state under subsection (a) of this section are ineligible to participate in the Texas Medicaid program unless the Texas Health and Human Services Commission (HHSC) or its designee approves the provider for enrollment on the

basis of a determination that the provider has provided, is providing, or will provide services under one or more of the following criteria:

(1) The services are medically necessary emergency services to a recipient who is located outside of the state, in which case the enrollment will be time-limited for an appropriate period as determined by HHSC or its designee, not to exceed one year;

(2) The services are medically necessary services to a recipient who is located outside of the state, and in the expert opinion of the recipient's attending physician or other provider, the recipient's health would be or would have been endangered if the recipient were required to travel to Texas, in which case the enrollment will be time-limited for an appropriate period as determined by HHSC or its designee, not to exceed one year;

(3) The services are medically necessary services that are more readily available to a recipient in the state where the recipient is located, in which case the enrollment will be time-limited for an appropriate period as determined by HHSC or its designee;

(4) The services are medically necessary services to a recipient who is eligible on the basis of participation in an adoption assistance or foster care program administered by the Texas Department of Family and Protective Services under Title IV-E of the Social Security Act, in which case the enrollment may be time-limited for an appropriate period as determined by HHSC or its designee;

(5) The services are medically necessary services that were prior authorized by HHSC or its designee, and documented medical justification indicating the reasons the recipient must obtain medical care outside Texas is furnished to HHSC or its designee before providing the services and before payment, in which case the enrollment may be time-limited for an appropriate period as determined by HHSC or its designee;

(6) The services are medically necessary services and it is the customary or general practice of recipients in a particular locality within Texas to obtain services from the out-of-state provider, as demonstrated by the provider being located in the United States and within 50 miles driving distance from the Texas state border, or as otherwise demonstrated on a case-by-case basis, in which case the enrollment may be time-limited for an appropriate period as determined by HHSC or its designee; or

(7) The services are medically necessary services to one or more dually eligible recipients (i.e., recipients who are enrolled in both Medicare and the Texas Medicaid program) and the out-of-state provider may be considered for reimbursement of co-payments, deductibles, and co-insurance, in which case the enrollment may be time-limited for an appropriate period as determined by HHSC or its designee, and the enrollment will be restricted to receiving reimbursement only for the Medicaid-covered portion of Medicare crossover claims.

(c) An out-of-state provider that applies for enrollment in Texas Medicaid must submit documentation along with the application to demonstrate that the provider meets one or more of the criteria in subsection (b) of this section. The provider must submit any additional requested information to HHSC or its designee before enrollment may be approved. An out-of-state provider does not meet the criterion in subsection (b)(6) of this section merely on the basis of having established business relationships with one or more providers that participate in the Texas Medicaid program, because the criterion in that paragraph applies only to the customary or general practice of recipients in regard to a recipient's choice of provider.

(d) When HHSC or its designee determines that an out-of-state provider meets one or more of the criteria in subsection (b) of this

section, the provider must meet all other applicable enrollment eligibility requirements, including those specified in §§371.33, 371.1681, 371.1683, 371.1685 and 371.1687 of this title (relating to On-Site Reviews of Prospective Providers, Provider Enrollment, Criminal History Checks, Use of Criminal History Record Information and Administrative Review of Rejection of Provider Enrollment by Reason of Criminal History) before enrollment may be approved.

(e) Other applicable requirements.

(1) An out-of-state provider that is enrolled pursuant to subsections (b), (c), and (d) of this section must follow all other applicable Texas Medicaid participation requirements identified by HHSC or its designee for each service provided. Other applicable requirements that must be followed include, but are not limited to, service benefits and limitations, documentation procedures, obtaining prior authorization for the service whenever required, and claims filing deadlines as specified in §354.1003 of this title (relating to Time Limits for Submitted Claims).

(2) Certain out-of-state providers are not entitled to utilize the extended 365-day claim filing deadline provided in §354.1003(a)(5)(H) of this title that is otherwise available to out-of-state providers, and must comply with the same claims filing deadlines that apply to in-state providers under that section. Those out-of-state providers are:

(A) Providers that are approved for enrollment under the criterion specified in subsection (b)(6) of this section, where the specific basis for approval is that the provider is located within 50 miles driving distance from the Texas state border; and

(B) Providers that are approved for enrollment under the criterion specified in subsection (b)(7) of this section regarding dually eligible recipients.

(f) An out-of-state provider that is enrolled pursuant to subsections (b), (c), and (d) of this section must:

(1) comply with the terms of the Texas Medical Assistance Program Provider Agreement;

(2) provide services in compliance with all applicable federal, state, and local laws and regulations related to licensure and certification in the state where the out-of-state provider is located; and

(3) comply with all state and federal laws and regulations relating to the Texas Medicaid program.

(g) HHSC or its designee determines the basis and amount of reimbursement for medical services provided outside Texas and within the United States in accordance with Chapter 355 of this title (relating to Reimbursement Rates).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 6, 2010.

TRD-201005736

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: November 21, 2010

For further information, please call: (512) 424-6900



## CHAPTER 355. REIMBURSEMENT RATES

## SUBCHAPTER E. COMMUNITY CARE FOR AGED AND DISABLED

### 1 TAC §355.508

The Health and Human Services Commission (HHSC) proposes to amend §355.508, concerning Reimbursement Methodology for Transition Assistance Services.

#### Background and Justification

The Department of State Health Services (DSHS) developed the Youth Empowerment Services (YES) waiver to provide intensive, community-based services to children and youth who meet the criteria for inpatient psychiatric hospitalization. The waiver implemented a pilot program to provide certain services to children and adolescents in Bexar and Travis counties.

Transition Assistance Services, known as Transitional Services in the YES wavier, are a covered service in the waiver.

This proposed rule adds Transitional Services from the YES waiver to the list of programs included in the reimbursement methodology for Transition Assistance Services.

#### Section-by-Section Summary

HHSC proposes to add transitional services in the YES waiver to the list of programs included in the reimbursement methodology for Transition Assistance Services.

#### Fiscal Note

Machelle Pharr, Chief Financial Officer for the Department of State Health Services, has determined that during the first five-year period the amended rule is in effect there will be no fiscal impact to state government. The proposed rule will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of enforcing or administering the section.

#### Small Business and Micro-business Impact Analysis

HHSC has determined that there is no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendment. This is a new service in the new YES waiver program. The implementation of the proposed rule amendment does not require any changes in practice or any additional cost to the contracted provider.

HHSC does not anticipate that there will be any economic cost to persons who are required to comply with this amendment. The amendment will not affect local employment.

#### Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that for each of the first five years the amendment is in effect, the expected public benefit is that the reimbursement methodology for Transitional Services in the YES waiver will be readily available to the public.

#### Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

#### Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government

Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### Public Comment

Questions about the content of this proposal may be directed to Sarah Hambrick in the HHSC Rate Analysis Department by telephone at (512) 491-1431. Written comments on the proposal may be submitted to Ms. Hambrick by facsimile at (512) 491-1998, by e-mail to sarah.hambrick@hhsc.state.tx.us, or by mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200, within 30 days of publication of this proposal in the *Texas Register*.

#### Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

The amendment affects Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§355.508. *Reimbursement Methodology for Transition Assistance Services.*

The reimbursement for transition assistance services will be determined as a one-time rate per client based on modeled costs of compensation and other support costs using data from surveys, cost reports, consultation with other professionals in delivering contracted services, or other sources determined appropriate by HHSC. This rate is for eligible clients receiving transition assistance services in the Community Based Alternatives, Community Living Assistance and Support Services, Medically Dependent Children, Deaf Blind with Multiple Disabilities, and Consolidated Waiver programs, or transitional services in the Youth Empowerment Services waiver program.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 7, 2010.

TRD-201005749

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: November 21, 2010

For further information, please call: (512) 424-6900



## SUBCHAPTER J. PURCHASED HEALTH SERVICES

## DIVISION 5. GENERAL ADMINISTRATION

### 1 TAC §355.8083

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The Texas Health and Human Services Commission (HHSC) proposes to repeal §355.8083, concerning Medical Care or Services Provided Outside of Texas in Another State of the United States.

#### Background and Justification

The current rule addresses program policy; however, Chapter 355 of the Texas Administrative Code is intended to cover Medicaid reimbursement rates rather than program policy. HHSC proposes to repeal the rule and move the program policy information related to out-of-state providers to new rules in Chapter 354, Medicaid Health Services. HHSC is proposing these new rules concurrently with this repeal. These changes are designed to strengthen the Medicaid rules regarding out-of-state providers.

#### Section-by-Section Summary

HHSC proposes to repeal §355.8083. The program policy information included in this rule will be included in proposed new §354.1440, Medical Care or Services Provided Outside of Texas.

#### Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first 5-year period the rule repeal is in effect, there will be no fiscal impact to state government. The proposed repeal will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

#### Small and Micro-business Impact Analysis

Ms. Rymal has also determined that there will be no effect on small businesses or micro businesses to comply with the rule repeal as they will not be required to alter their business practices as a result of the repeal. There are no anticipated economic costs to persons who are required to comply with the proposed repeal. There is no anticipated negative impact on local employment.

#### Public Benefit

Billy Millwee, Associate Commissioner for Medicaid and CHIP, has determined that for each year of the first five years the rule repeal is in effect, the public will benefit from the repeal. The anticipated public benefit of enforcing the proposed repeal is the program policy information included in the current rule will be easier to locate, as it will be included in the appropriate chapter related to program policy.

#### Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This

proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

#### Public Comment

Written comments on the proposal may be submitted to Ryan Keyser, Senior Policy Analyst in the Medicaid/CHIP Division, 12365A Riata Trace Pkwy (Bldg 9), Austin, TX 78727; by fax to (512) 249-3707; or by e-mail to ryan.keyser@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

#### Public Hearing

A public hearing is scheduled for November 4, 2010 from 11:00 a.m. to 12:00 p.m. (central time) in the Health and Human Services Braker Center, Lone Star Conference Room, located at 11209 Metric Boulevard, Building H, Austin, Texas. Persons requiring further information, special assistance, or accommodations should contact Leigh A. Van Kirk at (512) 491-2813.

#### Statutory Authority

The repeal is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed repeal affects Texas Human Resources Code Chapter 32, and Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.8083. *Medical Care or Services Provided Outside of Texas in Another State of the United States.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 6, 2010.

TRD-201005737

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: November 21, 2010

For further information, please call: (512) 424-6900



## CHAPTER 370. STATE CHILDREN'S HEALTH INSURANCE PROGRAM

### SUBCHAPTER C. ENROLLMENT, DISENROLLMENT, AND RENEWAL OF MEMBERSHIP

#### DIVISION 2. COST-SHARING REQUIREMENTS

##### 1 TAC §370.325

The Texas Health and Human Services Commission (HHSC) proposes to amend §370.325, concerning the annual aggregate cost-sharing cap in the Children's Health Insurance Program (CHIP).

#### Background and Justification

The Social Security Act and federal regulations prohibit states from imposing in CHIP cost-sharing charges that, in the aggregate, exceed five percent of a family's total income for the length of a child's eligibility period (see §2103(e)(3) of the Social Security Act and 42 C.F.R. §457.560). The CHIP aggregate annual cost-sharing cap is the maximum amount a CHIP family may pay out-of-pocket for the program during the 12-month enrollment period. Once a family reaches its cost-sharing cap, the family is no longer required to pay any cost-sharing for the remainder of the enrollment period. Cost-sharing in CHIP includes an annual enrollment fee and co-payments for certain CHIP services.

The CHIP enrollment broker determines the aggregate cost-sharing cap for a CHIP family based on net income for the family's budget group, and informs the family of its cost-sharing amount upon enrollment. Each family is responsible for tracking its own cost-sharing.

The proposed amended rule deletes the actual cost-sharing caps from the TAC. The proposed amended rule clarifies that the annual aggregate cost-sharing cap for CHIP is established in the Texas CHIP State Plan, as approved by the Centers for Medicare and Medicaid Services (CMS). This proposed change does not prevent members from having access to or being informed about changes in their aggregate cost-sharing cap because HHSC provides public notice in the *Texas Register* each time the agency proposes changes to the Texas CHIP State Plan. In addition, the enrollment broker will mail written notice to CHIP members prior to making any cost-sharing changes for the program.

#### Section-by-Section Summary

Proposed amended subsection (a) indicates the aggregate cost-sharing caps are established in the Texas CHIP State Plan and are approved by CMS. In addition, the amendment ensures that the CHIP aggregate cost-sharing cap will not exceed five percent of a family's total income in order to comply with federal requirements.

Subsection (b) is deleted because proposed amended subsection (a) clarifies that CHIP aggregate cost-sharing caps are established in the Texas CHIP State Plan, with federal approval.

Subsection (c) is deleted because proposed amended subsection (a) clarifies that CHIP aggregate cost-sharing caps are established in the Texas CHIP State Plan, with federal approval.

Subsection (d) is renumbered as subsection (b) because proposed changes delete current subsections (b) and (c).

The proposed amendment also replaces several references to "member" with "family," to clarify that the annual aggregate CHIP cost-sharing cap applies to the family as a whole, as opposed to a separate cap for each CHIP member in the family.

#### Fiscal Note

Greta Rymal, Deputy Commissioner for Financial Services, has determined that during the first five-year period the amended rule is in effect there will be no fiscal impact to state government. The proposed rule will not result in any fiscal implications for local

health and human services agencies. Local governments will not incur additional costs.

#### Small and Micro-business Impact Analysis

Ms. Rymal has also determined that there will be no effect on small businesses or micro businesses to comply with the amendment as they will not be required to alter their business practices as a result of the rule. There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

#### Public Benefit

Billy Millwee, Associate Commissioner for Medicaid and CHIP, has determined that for each year of the first five years the amendment is in effect, the public will benefit from the adoption of the section. The anticipated public benefit, as a result of enforcing the section, will be that the CHIP program remains affordable for families. Since the Texas CHIP State Plan is a public document that specifies the cost-sharing caps for each CHIP income group, CHIP members will continue to have access to and be informed about changes to their annual aggregate CHIP cost-sharing cap. The enrollment broker mails CHIP members written notice prior to implementing cost-sharing changes.

In addition, the proposed rule amendment ensures that the annual aggregate cost-sharing caps for Texas CHIP will not exceed the federal maximum cost-sharing cap amount for CHIP. Therefore, CHIP families will be able to maintain affordable health care coverage in Texas.

#### Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environment exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environment exposure.

#### Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

#### Public Comment

Written comments on the proposal may be submitted to Valerie Eubert-Baller, Senior Policy Analyst, Medicaid and CHIP Division, Health and Human Services Commission at P.O. Box 85200, MC H-310, Austin, Texas 78708-5200, by fax to (512) 491-1953, or by e-mail to Valerie.Eubert-Baller@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

#### Public Hearing

A public hearing is scheduled for November 3, 2010 from 2:00 p.m. to 3:00 p.m. (central time) in the Health and Human Services Braker Center, Lone Star Conference Room, located at 11209 Metric Boulevard, Building H, Austin, Texas. Persons requiring further information, special assistance, or accommodations should contact Leigh A. Van Kirk at (512) 491-2813.

#### Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority and Texas Health and Safety Code §62.051(d), which directs HHSC to adopt rules as necessary to implement the Children's Health Insurance Program.

The proposed amendment affects Texas Health and Safety Code, Chapter 62, and Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

#### §370.325. *Cost-Sharing Cap.*

(a) The aggregate annual Children's Health Insurance Program (CHIP) [There is a] cost-sharing cap is based on a family's net Budget Group income, established at the time of eligibility determination, as a [the Budget Group's] percentage of the federal poverty level (FPL). The aggregate annual CHIP cost-sharing cap is established in the Texas CHIP State Plan and approved by the Centers for Medicare and Medicaid Services (CMS). The aggregate annual CHIP cost-sharing cap will not exceed 5 percent of a family's total annual income as required under federal law and federal regulations (see Social Security Act §2103(e)(3)(B) and 42 C.F.R. §457.560(a)). The Applicant is responsible for tracking CHIP [the member's] cost-sharing expenditures for the family on the form provided by the Texas Health and Human Services Commission (HHSC) or its designee and advising HHSC's designee when the CHIP cost-sharing cap is reached. HHSC or its [HHSC's] designee is responsible for:

(1) computing the aggregate annual CHIP cost-sharing cap for the family [each member] and informing the Applicant of the amount at enrollment;

(2) providing the Applicant with a form for keeping track of each CHIP member's co-payments and enrollment fee payment;

(3) notifying the affected Health Plan within two business days of receiving notice from the Applicant that a family [member] has reached the aggregate annual CHIP cost-sharing cap; and

(4) informing HHSC that an Applicant is owed a refund in the form of a warrant issued by the State Comptroller's Office, if the Applicant notifies HHSC's designee that the family [Applicant] has exceeded its aggregate annual CHIP [his or her] cost-sharing cap and an enrollment fee has been received from the family [Applicant] that is in excess of the CHIP cost-sharing cap.

[(b) A Budget Group with gross income at or below 150% of FPL has a cost-sharing cap during the 12-month coverage period of 1.25% of its annual gross income.]

[(c) A Budget Group with gross income greater than 150% of FPL has a cost-sharing cap during the 12-month coverage period equal to 2.5% of its annual gross income.]

(b) [(d)] On notification by HHSC's designee that a family [member] has reached its aggregate annual CHIP [the] cost-sharing cap, a Health Plan will issue a new Health Plan Member Identification Card reflecting the absence of a co-payment requirement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 6, 2010.

TRD-201005738

Steve Aragon  
Chief Counsel  
Texas Health and Human Services Commission  
Earliest possible date of adoption: November 21, 2010  
For further information, please call: (512) 424-6900



## **TITLE 19. EDUCATION**

### **PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD**

#### **CHAPTER 5. RULES APPLYING TO PUBLIC UNIVERSITIES AND HEALTH-RELATED INSTITUTIONS OF HIGHER EDUCATION IN TEXAS**

##### **SUBCHAPTER C. APPROVAL OF NEW ACADEMIC PROGRAMS AND ADMINISTRATIVE CHANGES AT PUBLIC UNIVERSITIES, HEALTH-RELATED INSTITUTIONS, AND ASSESSMENT OF EXISTING DEGREE PROGRAMS**

###### **19 TAC §5.46**

The Texas Higher Education Coordinating Board (Coordinating Board) proposes an amendment to §5.46, concerning Approval of New Academic Programs and Administrative Changes at Public Universities, Health-Related Institutions, and Assessment of Existing Degree Programs for the purpose of adding an additional criterion for the approval of new doctoral degree programs. The new criterion would stipulate that the most recent six-year baccalaureate degree graduation rate must equal or exceed the most recent six-year statewide average baccalaureate degree graduation rate. For the purposes of the proposed amendment, baccalaureate degree graduation rates at Texas A&M University and The University of Texas at Austin would not be included in the calculation of the statewide average six-year baccalaureate degree graduation rate.

Dr. MacGregor Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for each year of the first five years the section is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the section as proposed.

Dr. Stephenson has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will help assure that institutions applying for new doctoral degree programs establish and maintain productive baccalaureate degree programs. There will be no effect on small businesses. There will be no anticipated economic costs to persons who are required to comply with the section as proposed. There will be no impact on local employment.

Comments on the proposal may be submitted to Dr. MacGregor M. Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or macgregor.stephenson@thecb.state.tx.us. Comments will be

accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under the provisions of Texas Education Code, Chapter 61, Subchapter C, which provides the Coordinating Board with the authority to regulate the awarding or offering of degrees, credit toward degrees, and the use of certain terms.

The amendment affects Texas Education Code, §61.051(e).

###### *§5.46. Criteria for New Doctoral Programs.*

New doctoral programs must meet all of the following criteria:

(1) - (14) (No change.)

(15) Essential Criterion for New Doctoral Degree Programs. An essential criterion for the approval of a new doctoral degree program shall be that the institution's most recent six-year baccalaureate graduation rate should equal or exceed the most recent annual statewide average six-year baccalaureate graduation rate. For the purposes of this rule, the six-year baccalaureate graduation rates at Texas A&M University and The University of Texas at Austin shall not be included in the calculation of the state average. The statewide average six-year baccalaureate graduation rate shall be calculated using the six-year baccalaureate graduation rates of general academic teaching institutions only.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 11, 2010.

TRD-201005774

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: January 27, 2011

For further information, please call: (512) 427-6114



## **PART 2. TEXAS EDUCATION AGENCY**

### **CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING**

#### **SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING FINANCIAL ACCOUNTABILITY**

##### **DIVISION 1. FINANCIAL ACCOUNTABILITY RATING SYSTEM**

###### **19 TAC §§109.1002 - 109.1005**

The Texas Education Agency (TEA) proposes amendments to §§109.1002-109.1005, concerning the financial accountability rating system. The sections establish provisions that detail the ratings, types of ratings, criteria, reporting, and sanctions for the financial accountability rating system. The proposed amendments would update the School Financial Integrity Rating System of Texas (School FIRST) by specifying new provisions for implementation beginning with fiscal year 2010-2011, including the deletion of one non-critical school district indicator and

the addition of 18 open-enrollment charter school indicators, along with new rating worksheets and calculations that reflect these changes. The proposed revisions to the rating system are intended to better align School FIRST for the two types of entities and clarify certain aspects of the School FIRST calculations. Additionally, the proposed amendments would establish a process for lowering a financial accountability rating after initial assignment if determined necessary by the commissioner.

House Bill (HB) 3, 81st Texas Legislature, 2009, modified and renumbered the Texas Education Code (TEC), Chapter 39, Subchapter I, Financial Accountability, and established Chapter 39, Subchapter D, Financial Accountability. Rules in 19 TAC Chapter 109, Budgeting, Accounting, and Auditing, Subchapter AA, Commissioner's Rules Concerning Financial Accountability Rating System, establish provisions that detail the purpose, ratings, types of ratings, criteria, reporting, and sanctions for the financial accountability rating system, in accordance with SB 218, 77th Texas Legislature, 2001, and HB 3. The rules include the financial accountability rating forms that explain the indicators that the TEA will analyze to assign school district and open-enrollment charter school financial accountability ratings. These forms specify the minimum financial accountability rating information that school districts and open-enrollment charter schools are to report to parents and taxpayers.

The proposed amendments to 19 TAC Chapter 109, Subchapter AA, would update the rating system by specifying new provisions to be implemented beginning with fiscal year 2010-2011. The proposed changes to the rating system are intended to better align School FIRST for school districts and open-enrollment charter schools and clarify certain aspects of the School FIRST calculations. Specifically, the proposed amendments to 19 TAC Chapter 109, Subchapter AA, are as follows.

The proposed amendment to 19 TAC §109.1002, Financial Accountability Ratings, would update the rating system by adding new subsections (f) and (g) to specify new provisions that will be implemented beginning with fiscal year 2010-2011, including the deletion of one non-critical school district indicator and the addition of 18 open-enrollment charter school indicators, along with new rating worksheets and calculations that reflect these changes. The proposed rating system would be applicable to financial accountability ratings assigned beginning with data from fiscal year 2010-2011 (the final ratings that will be issued in summer 2012).

In 19 TAC §109.1002, proposed new subsection (f) would establish the financial accountability rating indicators used to determine a school district rating beginning with fiscal year 2010-2011 by adding a new rating worksheet in Figure: 19 TAC §109.1002(f). The proposed new worksheet would include 21 indicators used to calculate a maximum score of 75 points and would differ from the worksheet for previous fiscal years as follows:

Indicator 7, which referred to a school district's academic rating, would be deleted as a rating indicator.

Indicators 8 through 22 would be renumbered accordingly.

Indicator 11 would be modified to provide additional examples.

Indicator 21 would be adjusted to reflect lower interest rates.

In 19 TAC §109.1002, proposed new subsection (g) would establish the financial accountability rating indicators used to determine an open-enrollment charter school rating beginning with fiscal year 2010-2011 by adding a new rating worksheet in Fig-

ure: 19 TAC §109.1002(g). The proposed new worksheet would add 18 indicators for a total of 21 indicators used to calculate a maximum score of 75 points.

The proposed amendment to 19 TAC §109.1002 would also reletter existing subsections (f) and (g). Additionally, relettered subsection (i), formerly subsection (g), would clarify that the financial accountability rating for a particular year will always be based on audited data from the previous fiscal year and would establish the rating to be assigned to an entity that fails to submit its annual financial and compliance report on a timely basis.

The proposed amendment to 19 TAC §109.1003, Types of Financial Accountability Ratings, would update language to align the types of ratings assigned to charter schools and traditional school districts and provide for the lowering of a financial accountability rating based on findings of an investigation. Additionally, subsection (c) would be added to specify when ratings are in effect and the circumstances under which a rating may be revised after initial assignment.

The proposed amendment to 19 TAC §109.1004, Criteria for Financial Accountability Ratings, would clarify the criteria for open-enrollment charter school financial indicators. Specifically, proposed new subsection (b) would clarify issues related to indicators and requirements that apply at the charter holder and/or charter school level.

The proposed amendment to 19 TAC §109.1005, Reporting, would clarify the timing of certain required comparisons that must be included in the annual financial management report and state that the annual financial management report prepared by a school district or open-enrollment charter school must also include other written documentation of employment for a superintendent where no contract exists. Additionally, new subsection (b)(2)(F) would add to the annual financial management report a summary schedule of the data submitted using the electronic-based program developed under the financial solvency provisions of the TEC, §39.0822. Revisions to subsection (c) would further clarify the publication requirements for open-enrollment charter schools related to the public hearing notice required for the annual financial management report hearing.

In addition, 19 TAC Chapter 109, Subchapter AA, has been renamed and organized to include the addition of rules relating to financial accountability. The subchapter title has changed from "Commissioner's Rules Concerning Financial Accountability Rating System" to "Commissioner's Rules Concerning Financial Accountability." School FIRST rules are organized under new Division 1, Financial Accountability Rating System.

The proposed amendments would update the worksheet and calculations used beginning in fiscal year 2010-2011 to report school district and open-enrollment charter school financial accountability information. TEA staff will continue to generate school district and open-enrollment charter school financial accountability ratings based on data submitted by school districts and open-enrollment charter schools. TEC, §39.082, specifically requires open-enrollment charter schools to follow the same reporting requirements related to the financial accountability rating system that school districts have followed for several years. The proposal would also require a school district and open-enrollment charter school to include in its annual financial management report a summary schedule of data submitted to support the financial solvency provisions of



the TEC, §39.0822. The proposed amendments would have no new locally maintained paperwork requirements.

Laura Taylor, associate commissioner for accreditation, has determined that for the first five-year period the proposed amendments are in effect there will be no additional costs for state or local government as a result of enforcing or administering the amendments.

Ms. Taylor has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be updates to the financial accountability rating system to ensure that school districts and open-enrollment charter schools will be held accountable for the quality of their financial management practices and will achieve improved performance in the management of their financial resources. In addition, reporting increases data available to the public and promotes transparency. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal begins October 22, 2010, and ends November 22, 2010. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on October 22, 2010.

The amendment is proposed under the Texas Education Code, §39.085, which requires the commissioner of education to adopt rules as necessary for the implementation and administration of financial accountability rating systems for school districts and open-enrollment charter schools.

The amendments implement the TEC, §§39.081-39.085.

*§109.1002. Financial Accountability Ratings.*

(a) In accordance with Texas Education Code (TEC), Chapter 39, Subchapter D, each school district and open-enrollment charter school must be assigned a financial accountability rating by the Texas Education Agency (TEA). The specific procedures for determining financial accountability ratings will be established annually by the commissioner of education and communicated to all school districts and open-enrollment charter schools.

(b) For fiscal years 2002-2003, 2003-2004, 2004-2005, and 2005-2006, each financial accountability rating of a school district is based on its overall performance on certain financial measurements, ratios, and other indicators established by the commissioner of education in the financial accountability rating form provided in this subsection entitled "School FIRST - Rating Worksheet," effective May 2003. Figure: 19 TAC §109.1002(b) (No change.)

(c) For fiscal years 2006-2007 and 2007-2008, the financial accountability rating of a school district is based on its overall performance on certain financial measurements, ratios, and other indicators established by the commissioner of education in the financial accountability rating form provided in this subsection entitled "School FIRST - Rating Worksheet Effective August 2006." On this form, Indicator

13 entitled, "Was The Percent Of Operating Expenditures Expended For Instruction More Than or Equal to 65%?" was phased in over a three-year period, as follows.

Figure: 19 TAC §109.1002(c) (No change.)

(1) For fiscal year 2006-2007, the indicator was "Was The Percent Of Operating Expenditures Expended For Instruction More Than or Equal to 55%?"

(2) For fiscal year 2007-2008, the indicator was "Was The Percent Of Operating Expenditures Expended For Instruction More Than or Equal to 60%?"

(3) For fiscal year 2008-2009 and beyond, the indicator was repealed.

(d) For [Beginning with] fiscal years [year] 2008-2009 and 2009-2010, the financial accountability rating of a school district is based on its overall performance on certain financial measurements, ratios, and other indicators established by the commissioner of education in the financial accountability rating form provided in this subsection entitled "School FIRST - Rating Worksheet Dated March 2010." Figure: 19 TAC §109.1002(d) (No change.)

(e) For [Beginning with] fiscal years [year] 2008-2009 and 2009-2010, the financial accountability rating of an open-enrollment charter school is based on its overall performance on certain financial measurements, ratios, and other indicators established by the commissioner of education in the financial accountability rating form provided in this subsection entitled "Charter School - School FIRST - Rating Worksheet Dated March 2010." Figure: 19 TAC §109.1002(e) (No change.)

(f) Beginning with fiscal year 2010-2011, the financial accountability rating of a school district is based on its overall performance on certain financial measurements, ratios, and other indicators established by the commissioner of education in the financial accountability rating form provided in this subsection entitled "School FIRST - Rating Worksheet Dated July 2010." Figure: 19 TAC §109.1002(f)

(g) Beginning with fiscal year 2010-2011, the financial accountability rating of an open-enrollment charter school is based on its overall performance on certain financial measurements, ratios, and other indicators established by the commissioner of education in the financial accountability rating form provided in this subsection entitled "School FIRST for Charter Schools - Rating Worksheet Dated July 2010." Figure: 19 TAC §109.1002(g)

(h) [(f)] A financial accountability rating by a voluntary association is a local option of the district or open-enrollment charter school, but it does not substitute for a financial accountability rating by the TEA.

(i) [(g)] The TEA will issue a preliminary financial accountability rating to a school district or open-enrollment charter school within 150 days of its complete financial data being made available to the TEA staff. The financial accountability rating for a particular year will always be based on complete and audited financial data from the previous fiscal year given the availability of the data. For example, the final 2010 School FIRST rating issued in August 2010 is based on complete and audited financial data for the 2008-2009 fiscal year and is the financial accountability rating for the 2009-2010 school year for the purposes of §97.1055 of this title (relating to Accreditation Status).

(1) The issuance of the preliminary or final rating will not be delayed if a district or open-enrollment charter school fails to meet the statutory deadline for submitting the annual financial

and compliance report. Instead, a rating of Suspended-Data Quality under §109.1003(a)(5) of this title (relating to Types of Financial Accountability Ratings) will be issued.

(2) A district or open-enrollment charter school may submit a written appeal requesting that the TEA review a preliminary rating if the preliminary rating was based on a data error solely attributable to the TEA's review of the data for any of the indicators.

(A) The TEA office responsible for financial audits must receive the appeal no later than 30 days after the TEA's release of the preliminary rating, and the appeal must include substantial evidence that supports the district's or open-enrollment charter school's position.

(i) Only appeals that would result in a change of the preliminary rating will be considered.

(ii) The TEA staff will review information submitted by the district or open-enrollment charter school to validate the statements made to the extent possible. The TEA will examine all relevant data.

(iii) The TEA staff will prepare a recommendation and forward it to an external panel for review. This review panel will provide independent oversight to the appeals process.

(iv) The external review panel will examine the appeal, supporting documentation, staff research, and the staff recommendation. The review panel will determine its recommendation.

(v) The external review panel's recommendation will be forwarded to the commissioner.

(vi) The commissioner will make a final decision in accordance with the timeline specified in subparagraph (E) of this paragraph.

(B) Appeals received 31 days or more after the TEA issues a preliminary rating will not be considered.

(C) Errors by a district or open-enrollment charter school in recording data or submitting data through the TEA data collection and reporting system do not constitute a valid basis for appealing a preliminary rating.

(D) A district that is the fiscal agent for a shared services [service] arrangement (SSA) and has the staff of the SSA on its [their] payroll may appeal the two indicators related to student-to-teacher and student-to-staff ratios if it fails [Indicators 17 and 18 if they fail] these indicators due to the number of staff that are SSA staff. The district must provide the TEA with the number of staff that are employees of the district and the number of staff that are part of the SSA. This adjustment should not be a factor for an open-enrollment charter school that is a fiscal agent since the SSA reporting requirements are different than a school district.

(E) If the TEA receives an appeal of a preliminary rating, a final rating will be issued to the school district or open-enrollment charter school no later than 45 days after the appeal has been received by the TEA.

(F) If the TEA does not receive an appeal of a preliminary rating, the preliminary rating automatically becomes a final rating on the 31st day after issuance of the preliminary rating.

(G) A final rating issued by the TEA pursuant to this section may not be appealed under the TEC, §7.057, or any other law or rule.

*§109.1003. Types of Financial Accountability Ratings.*

(a) The types of ratings school districts or open-enrollment charter schools may receive are as follows.

(1) Superior Achievement. In accordance with the procedures established in §109.1002 of this title (relating to Financial Accountability Ratings), a school district or open-enrollment charter school shall be classified as Superior Achievement if it scores within the applicable range established by the commissioner of education for Superior Achievement.

(2) Above Standard Achievement. In accordance with the procedures established in §109.1002 of this title, a school district or open-enrollment charter school shall be classified as Above Standard Achievement if it scores within the applicable range established by the commissioner of education for Above Standard Achievement.

(3) Standard Achievement. In accordance with the procedures established in §109.1002 of this title, a school district or open-enrollment charter school shall be classified as Standard Achievement if it scores within the applicable range established by the commissioner of education for Standard Achievement.

(4) Substandard Achievement. In accordance with the procedures established in §109.1002 of this title, a school district or open-enrollment charter school shall be classified as Substandard Achievement if it [the district] responds negatively to specified indicators or if it [the district] scores within the applicable range established by the commissioner of education for Substandard Achievement. The commissioner of education may apply sanctions to a district that is assigned a Substandard Achievement rating and may require other corrective actions.

(5) Suspended--Data Quality. If serious data quality issues are disclosed by the commissioner of education, a Suspended--Data Quality rating shall be assigned to the school district or open-enrollment charter school. The Suspended--Data Quality rating will be assigned until the school district or open-enrollment charter school successfully resolves the data quality issues. The commissioner of education may apply sanctions to a school district or open-enrollment charter school that is assigned a Suspended--Data Quality rating and may require other corrective actions.

(b) The commissioner of education may lower a financial accountability rating based on findings of an investigation conducted under Texas Education Code (TEC), Chapter 39.

(c) Unless revised as a result of investigative activities by the commissioner of education as authorized under TEC, Chapter 39, or other law, a financial accountability rating remains in effect until replaced by a subsequent financial accountability rating. A financial accountability rating shall be revised after initial assignment when circumstances require such revision in order to achieve the purposes specified in §97.1053(a) of this title (relating to Purpose).

~~[(b) The types of ratings open-enrollment charter schools may receive are as follows:]~~

~~[(1) Standard Achievement. In accordance with the procedures established in §109.1002 of this title, an open-enrollment charter school shall be classified as Standard Achievement if it scores within the applicable range established by the commissioner of education for Standard Achievement.]~~

~~[(2) Substandard Achievement. In accordance with the procedures established in §109.1002 of this title, an open-enrollment charter school shall be classified as Substandard Achievement if the open-enrollment charter school responds negatively to specified indicators or if the open-enrollment charter school scores within the applicable range established by the commissioner of education for~~

~~Substandard Achievement. The commissioner of education may apply sanctions to an open-enrollment charter school that is assigned a Substandard Achievement rating and may require other corrective actions.]~~

~~[(3) Suspended--Data Quality. If serious data quality issues are disclosed by the commissioner of education, a Suspended--Data Quality rating shall be assigned to the open-enrollment charter school. The Suspended--Data Quality rating will be assigned until the open-enrollment charter school successfully resolves the data quality issues. The commissioner of education may apply sanctions to an open-enrollment charter school that is assigned a Suspended--Data Quality rating and may require other corrective actions.]~~

*§109.1004. Criteria for Financial Accountability Ratings.*

(a) The criteria for financial accountability ratings will be based upon indicators established by the commissioner of education and reflected in §109.1002 of this title (relating to Financial Accountability Ratings), in accordance with requirements in state law and after consultation with the comptroller of public accounts. The commissioner of education shall evaluate the rating system annually and may modify the system in order to improve the effectiveness of the rating system. Changes to criteria for ratings and their effective dates will be communicated to school districts and open-enrollment charter schools.

(b) The Financial Accounting Standards Board (FASB) requires not-for-profit entities such as charter holders to present financial statements showing an aggregate view of the entity as a whole.

(1) The Financial Accountability System Resource Guide, Module 10, Special Supplement--Charter Schools, Section 1.7.2, under §109.41 of this title (relating to Financial Accountability System Resource Guide), states that the charter holder is required to submit audited financial statements for the charter holder entity as a whole (both for charter and non-charter operations) as well as additional exhibits for each individual charter (determined by county-district number).

(2) For purposes of comparability among schools, all financial calculations for the indicators under §109.1002(g) of this title use the financial statements for a charter school; however, in the case of consolidated financial statements, any indicators relating to the auditor's opinion on the financial statements, material weaknesses in internal controls, or material noncompliance will be judged on the financial statements for the entity as a whole.

*§109.1005. Reporting.*

(a) Each school district and open-enrollment charter school is required to report information and financial accountability ratings to parents and taxpayers by implementing the following reporting procedures.

(1) Each school district and open-enrollment charter school is required to prepare and distribute an annual financial management report in accordance with subsection (b) of this section.

(2) The public must be provided an opportunity to comment on the report at a public hearing in accordance with subsection (c) of this section.

(b) The annual financial management report prepared by the school district and open-enrollment charter school must include:

(1) a description of its financial management performance based on a comparison, provided by the Texas Education Agency (TEA), of its performance on the indicators established by the commissioner of education and reflected in §109.1002 of this title (relating to Financial Accountability Ratings). The report will contain information that discloses:

(A) state-established standards; and

(B) the district's or open-enrollment charter school's financial management performance under each indicator for the current and previous year's [years'] financial accountability ratings;

(2) any descriptive information required by the commissioner of education, including:

(A) a copy of the superintendent's current employment contract or other written documentation of employment where no contract exists. The school district or open-enrollment charter school may publish the superintendent's employment contract on the school district's or open-enrollment charter school's Internet site in lieu of publication in the annual financial management report;

(B) a summary schedule for the fiscal year (12-month period) of total reimbursements received by the superintendent and each board member, including transactions resulting from use of the school district's or open-enrollment charter school's credit card(s) to cover expenses incurred by the superintendent and each board member. The summary schedule shall separately report reimbursements for meals, lodging, transportation, motor fuel, and other items (the summary schedule of total reimbursements is not to include reimbursements for supplies and materials that were purchased for the operation of the school district or open-enrollment charter school);

(C) a summary schedule for the fiscal year of the dollar amount of compensation and/or fees received by the superintendent from another school district or open-enrollment charter school or any other outside entity in exchange for professional consulting and/or other personal services. The schedule shall separately report the amount received from each entity;

(D) a summary schedule for the fiscal year of the total dollar amount by the executive officers and board members of gifts that had an economic value of \$250 or more in the aggregate in the fiscal year. This reporting requirement only applies to gifts received by the school district's or open-enrollment charter school's (or charter holder's) executive officers and board members (and their immediate family as described by Government Code, Chapter 573, Subchapter B, as a person related to another person within the first degree by consanguinity or affinity) from an outside entity that received payments from the school district or open-enrollment charter school (or charter holder) in the prior fiscal year, and gifts from competing vendors that were not awarded contracts in the prior fiscal year. This reporting requirement does not apply to reimbursement of travel-related expenses by an outside entity when the purpose of the travel is to investigate or explore matters directly related to the duties of an executive officer or board member, or matters related to attendance at education-related conferences and seminars whose primary purpose is to provide continuing education (this exclusion does not apply to trips for entertainment-related purposes or pleasure trips). This reporting requirement excludes an individual gift or a series of gifts from a single outside entity that had an aggregate economic value of less than \$250 per executive officer or board member; ~~and~~

(E) a summary schedule for the fiscal year of the dollar amount by board member for the aggregate amount of business transactions with the school district or open-enrollment charter school (or charter holder). This reporting requirement is not to duplicate the items disclosed in the summary schedule of reimbursements received by board members; and

(F) a summary schedule of the data submitted using the electronic-based program developed under the financial solvency provisions of Texas Education Code, §39.0822; and

(3) any other information the board of trustees of the district or open-enrollment charter school determines to be useful.

(c) The board of trustees of each school district or open-enrollment charter school shall hold a public hearing on the annual financial management report within two months after receipt of a final financial accountability rating (including a final rating of Suspended--Data Quality). The public hearing is to be held at a location in the district's or open-enrollment charter school's facilities. The board shall give notice of the hearing to owners of real property in the geographic boundaries of the district or open-enrollment charter school and to parents of district or open-enrollment charter school students. In addition to other notice required by law, notice of the hearing must be provided:

(1) to a newspaper of general circulation in the geographic boundaries of the district or each campus of an open-enrollment charter school once a week for two weeks prior to holding the public meeting, providing the time and place where the hearing is to be held. The first notice in the newspaper may not be more than 30 days prior to or less than 14 days prior to the public meeting. If there is not a newspaper published in the county in which the district's [~~or open-enrollment charter school's~~] central administration office is located or within the geographic boundaries of a campus of an open-enrollment charter school, then the notice is to be published in the county nearest the county seat of the county in which the district's [~~or open-enrollment charter school's~~] central administration office is located or in which the campus of the open-enrollment charter school is located; and

(2) through electronic mail to media serving the district or open-enrollment charter school.

(d) At the hearing, the annual financial management report shall be disseminated to the district's or open-enrollment charter school's parents and taxpayers that are in attendance.

(e) The annual financial management report is to be retained in the district or open-enrollment charter school for at least a three-year period after the public hearing and will be made available to parents and taxpayers upon request.

(f) A corrective action plan is to be filed with the TEA by each school district or open-enrollment charter school that received a rating of Substandard Achievement or Suspended--Data Quality. The corrective action plan, which is to be prepared in accordance with instructions from the commissioner of education, is to be filed within one month after the district's or open-enrollment charter school's public hearing. The commissioner of education may require certain information in the corrective action plan to address the factor(s) that may have contributed to a district's or open-enrollment charter school's rating of Substandard Achievement or Suspended--Data Quality.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 11, 2010.

TRD-201005775

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: November 21, 2010

For further information, please call: (512) 475-1497



## TITLE 25. HEALTH SERVICES

## PART 1. DEPARTMENT OF STATE HEALTH SERVICES

### CHAPTER 37. MATERNAL AND INFANT HEALTH SERVICES

#### SUBCHAPTER T. SCHOOL-BASED HEALTH CENTERS

##### 25 TAC §§37.531 - 37.538

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§37.531 - 37.538, concerning school-based health centers (SBHC).

##### BACKGROUND AND PURPOSE

The purpose of these sections is to establish rules for awarding grants to assist school districts with the costs of establishing and operating SBHCs and to establish standards for the funded centers. The proposed amendments reflect changes to Education Code, Chapter 38, resulting from the passage of House Bill (HB) 281, 81st Legislature, Regular Session, 2009, that would broaden applicant eligibility and prohibit awarding funds to not-for-profit organizations that offer reproductive services; update terminology to match current school health and school district industry practices; and update language to align with the current Texas Education Code.

School-based health centers are established by a school district or by community partners in conjunction with a school district or districts at one or more campuses within the school district to deliver primary and preventative health care programs and services for students and their families and prevent emerging health threats that are specific to the district. The department, formerly the Texas Department of Health, started voluntary funding for SBHCs in 1993 and in 1999, 76th Regular Legislative Session, HB 1, and subsequent appropriations acts, created a competitive grant program, and provided start-up funding for SBHCs. These provisions are now codified in Texas Education Code, Chapter 38.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 37.531 - 37.538 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

##### SECTION-BY-SECTION SUMMARY

Section 37.531 concerns the purpose and allows for procedures for awarding grants to applicants and reflects changes resulting from passage of House Bill 281.

Section 37.532 concerns the definitions and specifically defines an applicant to reflect change resulting from passage of House Bill 281, updates current health and school health industry terminology and aligns with Texas Education Code language.

Section 37.533 concerns the number of awards and aligns the section with the Texas Education Code.

Section 37.534 concerns the dollar amount of awards per biennium and added "as required by law" at the end of the sentence to define how this requirement was originated.

Section 37.535 concerns matching funds and revised rule text by deleting the word "obtained" and added the word "secured" to clarify word usage.

Section 37.536 concerns the competitive request for proposals process and replaced the word "accord" with "accordance" to correct grammar.

Section 37.537 concerns the guidelines for requests for proposals and reflects change resulting from passage of House Bill 281 regarding entities ineligible for grants.

Section 37.538 concerns the standards for school-based health centers and updates current health and school health industry terminology and aligns the section with the Texas Education Code; removes the district as the sole recipient for services provided by the SBHC and eliminates restrictions for when the funds should be used; eliminates the requirement for a SBHC sustainability plan after SBHC funding ends; clarifies which entity is responsible for securing written parental consent for "provision of student services;" allows a SBHC to coordinate with health care providers regardless of community size or location; removes specific language about who will be compensated for services to SBHCs; requires SBHCs to conduct, and not just facilitate client surveys; requires SBHCs to deliver services designed to increase student health through preventive health measures; and requires annual reports.

#### FISCAL NOTE

Lauri Kalanges, Acting Director, Health Promotion and Chronic Disease Prevention Section, has determined that for each year of the first five-year period that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the amendments as proposed.

#### MICRO-BUSINESS AND SMALL BUSINESS IMPACT ANALYSIS

Ms. Kalanges has also determined that there will be no effect on small businesses or micro-businesses required to comply with the amendments as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the amendments.

#### ECONOMIC COST TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the amendments as proposed. There is no anticipated negative impact on local employment.

#### PUBLIC BENEFIT

Ms. Kalanges has determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the amendments. The public benefit anticipated as a result of administering the sections is to provide health care to children through school-based health centers.

#### REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the

environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

#### PUBLIC COMMENT

Comments on the proposal may be submitted to Ellen Smith, Information Specialist, Child and Health Safety Branch, Department of State Health Services, P.O. Box 149347, Mail Code 1923, Austin, Texas 78714-9347, (512) 458-7111, extension 2140 or by email to [ellen.smith@dshs.state.tx.us](mailto:ellen.smith@dshs.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

#### LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed amendments have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Education Code, §38.063, which requires rules establishing standards for health care centers funded through grants; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

The amendments affect Texas Education Code, Chapter 38; Health and Safety Code, Chapter 1001; and Government Code, Chapter 531.

#### §37.531. Purpose.

The purpose of these sections is to establish procedures for awarding grants to assist applicants [~~school districts~~] with the costs of establishing and operating school-based health centers and to establish standards for the funded centers.

#### §37.532. Definitions.

The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Applicant--A school district, charter school, private school, local health department, hospital, health care system, university or non-profit organization applying for a grant from the Department of State Health Services to assist with the costs of establishing and operating a school-based health center.

(2) Primary [~~Conventional (primary)~~] health services--Family and home support; health care, including immunizations; dental health care; health education; and preventive health strategies.

(3) (No change.)

(4) Funded applicant--A school district, charter school, private school, local health department, hospital, health care system, uni-

versity or non-profit organization with which the Department of State Health Services executes a contract to establish and operate a school-based health center.

(5) (No change.)

(6) Local School Health Advisory Council [~~or Health Education and Health Care Advisory Council~~]-Persons appointed by the board of trustees of a school district to make recommendations [~~to the district~~] concerning the establishment and operation of school-based health centers and to assist the district in ensuring that local community values are reflected in the operation of each center. In addition to the majority of appointees who shall be parents of students enrolled in the district or districts, the board of trustees may [~~shall~~] also appoint at least one person from each of the following groups:

(A) - (H) (No change.)

(7) - (8) (No change.)

(9) Reproductive services--Family planning services as defined by §56.2 [~~§56.102~~] of this title (relating to Definitions).

(10) Rural area--A county with a population not greater than 50,000, or an area that has been designated under state or federal law as:

(A) - (B) (No change.)

(C) a medically underserved community [~~as defined by the Office of Rural Community Affairs~~].

(11) School-based health center--An entity established by a school district or by community partners in conjunction with a school district or districts [~~a school district jointly with a public health agency~~] at one or more campuses within [~~in~~] the [~~school~~] district to deliver primary and preventative [~~cooperative~~] health care programs and services for students and their families and prevent [~~prevention of~~] emerging health threats that are specific to the district [~~and conventional (primary) health services for students and their families~~].

(12) (No change.)

*§37.533. Number of Awards.*

The department shall award grants according to Texas Education Code, §38.063 [~~at least one grant each state Fiscal Year~~].

*§37.534. Dollar Amount of Awards Per Biennium.*

Grants awarded by the department shall not exceed \$250,000 per applicant per biennium as required by law.

*§37.535. Matching Funds.*

Funded applicants shall assure the department that matching funds secured [~~obtained~~] from nonfederal sources, including in-kind contributions, community or foundation grants, individual contributions, and operating funds from local government agencies, shall be available to the school-based health center project.

*§37.536. Competitive [~~Requests for Proposals~~] Process.*

The department shall award grants to applicants annually through a competitive Request for Proposals (RFP) process administered in accordance [~~accord~~] with all applicable policies and procedures of the department.

*§37.537. Guidelines [~~Procedures~~] for Requests for Proposals.*

The department shall complete at least one Request for Proposals (RFP) process for school-based health centers per state fiscal year.

(1) - (2) (No change.)

(3) A grant may not be awarded to a non-profit organization that offers reproductive services, contraceptive services, counseling, or

referrals, or any other service that requires a license under Health and Safety Code, Chapter 245, or that is affiliated with a nonprofit organization that is licensed under Health and Safety Code, Chapter 245.

*§37.538. Standards for School-Based Health Centers.*

(a) Funded applicants shall comply with the following standards for school-based health centers.

(1) Community-based solutions. The funded applicant shall facilitate collaboration among families, schools, and members of the community to assess and meet the health needs of the community's children and families. The funded applicant shall utilize all the following strategies for facilitating community-based solutions:

(A) Establish or utilize a local school health advisory council per Education Code, Title 2, Chapter 28, §28.004 [~~or a local health education and health care advisory council per Education Code, Title 2, Chapter 38, §38.058~~] to make recommendations [~~to the district~~] on the establishment and operation of school-based health centers and to assist the district in ensuring that local community values are reflected in the operation of each center and in the provision of health education.

(B) - (D) (No change.)

(2) Administration. The funded applicant shall plan and administer a school-based health center that meets the health needs of the community's children and families by use of the following strategies:

(A) (No change.)

(B) Establish efficient, client-friendly procedures for utilizing all available sources of funding to compensate [~~the district~~] for services provided by the school-based health center, including reimbursement from the state Medicaid program, a state children's health plan program, private health insurance or health benefit plans. Funds received through billing for services shall be used for [~~current and future~~] operations of the school-based health center.

(C) (No change.)

(D) Develop and present a specific, detailed plan for [~~future~~] funding [~~of~~] the school-based health center [~~that demonstrates how the center will continue to operate when grant funding is no longer available~~].

(E) Research, develop, and implement the forms and administrative procedures necessary to remain in compliance with all applicable and relevant legislation and regulations. Required procedures contained in applicable legislation for operation of school-based health centers include but are not limited to the following:

(i) provision of services to a student only if the school-based health center [~~school district or the provider with whom the district contracts~~] has obtained written consent to the services from the student's parent within the one-year period preceding the date on which the services are provided, and the consent has not been revoked;

(ii) - (v) (No change.)

(vi) a good faith effort by staff of a school-based health center [~~located in a rural area described by §37.532(8) of this title (relating to Definitions)~~] to identify and coordinate with existing health care providers;

(vii) - (viii) (No change.)

(ix) utilization of all available sources of funding to compensate [~~the school district or provider with whom the district contracts~~] for services provided by a school-based health center;

(x) ~~conduct [or facilitation of the conduct of]~~ client surveys in school-based health centers by funded applicants; and

(xi) (No change.)

(3) Emphasis on prevention. A funded applicant shall provide for primary emphasis on the delivery of primary ~~[conventional (primary)]~~ health services and secondary emphasis on the implementation of population-based models that prevent emerging health threats by use of the following strategies:

(A) - (E) (No change.)

(4) Focus on outcomes. A funded applicant shall focus on the achievement of outcomes that can be documented, using the following strategies:

(A) delivering primary ~~[conventional (primary)]~~ health services and disease prevention of emerging health threats through access to appropriate primary and preventive care for children through a program designed to achieve the following goals:

(i) - (ii) (No change.)

(iii) an increase in the health of students through preventive health measures including immunizations, and routine physical examinations including checkups conducted in accordance with the Texas Health Steps program.

~~[(iii) stabilization of each student's physical well-being.]~~

(B) A funded applicant shall research, document, analyze, and evaluate outcomes, including the goals listed in subparagraph (A) of this paragraph, by activities that include but are not limited to the following:

(i) (No change.)

(ii) providing quarterly and annual reports as required by the department;

(iii) - (iv) (No change.)

(b) Compliance. A funded applicant shall comply with standards required by Education Code, Chapter 38, Subchapter B, and provide to the department annually a statement signed by a representative of the school district and the local school health advisory council stating that the district and the local school health advisory council have ~~[has]~~ made a good faith effort to meet all requirements of the department.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 8, 2010.

TRD-201005753

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: November 21, 2010

For further information, please call: (512) 458-7111 x6972



## CHAPTER 169. ZOONOSIS CONTROL

### SUBCHAPTER F. REPTILE-ASSOCIATED SALMONELLOSIS

## 25 TAC §169.121

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes an amendment to §169.121, concerning reptile-associated salmonellosis.

### BACKGROUND AND PURPOSE

The amendment is necessary to comply with Government Code, Chapter 81, Subchapter I, "Animal-Borne Diseases," which requires retail pet stores to post signs and distribute warnings relating to reptile-associated salmonellosis to purchasers of reptiles. The signs and warnings are to be in accordance with the form and content designated by the department.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 169.121 has been reviewed and the department has determined that reasons for adopting the section continue to exist because a rule on this subject is needed.

### SECTION-BY-SECTION SUMMARY

The amendment to §169.121 allows for consistency with the Centers for Disease Control and Prevention recommendations; clarification of requirements for retailers to post warning signs and distribute written warnings to inform purchasers that reptiles may carry *Salmonella* bacteria in accordance with Health and Safety Code, Chapter 81; and recommendations for preventing transmission of *Salmonella* from reptiles to humans.

### FISCAL NOTE

Adolfo Valadez, M.D., MPH, Division Director, Prevention and Preparedness Services, has determined that for each year of the first five-year period that the section will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the section as proposed.

### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Dr. Valadez has also determined that there will be no adverse impact on small businesses or micro-businesses required to comply with the section as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the section. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no anticipated negative impact on local employment. Therefore, an economic impact statement and regulatory flexibility analysis for small and micro-businesses are not required.

### PUBLIC BENEFIT

In addition, Dr. Valadez has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering the section will be the increased public awareness of the risk involved with having reptiles as pets as it pertains to reptile-associated salmonellosis.

### REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment

or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendment does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

#### PUBLIC COMMENT

Comments on the proposal may be submitted to Tom Sidwa, DVM, Department of State Health Services, Community Preparedness Section, Zoonosis Control Branch, Mail Code 1956, P.O. Box 149347, Austin, Texas 78714-9347, or by email to Tom.Sidwa@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

#### LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

#### STATUTORY AUTHORITY

The amendment is authorized by Health and Safety Code, §81.004, which allows the department to adopt rules necessary for the effective administration and implementation of the Communicable Disease Prevention and Control Act; Health and Safety Code, §81.352, which requires the department to adopt a rule governing the form and content of the sign and written warning relating to reptile-associated salmonellosis; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rule implements Government Code, §2001.039.

The amendment affects Health and Safety Code, Chapters 81 and 1001; and Government Code, Chapter 531.

#### §169.121. *Reptile-Associated Salmonellosis.*

(a) The Texas Health and Safety Code, §81.352, requires retail stores that sell reptiles to post warning signs and distribute written warnings regarding reptile-associated salmonellosis to purchasers in accordance with the form and content designated by the Department of State Health Services.

(b) The warning signs must meet the following guidelines.

(1) - (2) (No change.)

(3) At a minimum, the contents of the sign must include the following recommendations for preventing transmission of *Salmonella* from reptiles to humans.

(A) Persons should always wash their hands thoroughly with soap and running water after handling reptiles or reptile cages or

after contact with reptile feces or the water from reptile containers or aquariums. Wash your hands before you touch your mouth.

(B) Persons at increased risk for infection or serious complications of salmonellosis, such as children younger than 5 years of age, the elderly, and persons whose immune systems have been weakened by pregnancy, disease (for example, cancer), or certain medical treatments (for example, chemotherapy), [(e.g., children aged <5years and immunocompromised persons)] should avoid contact with reptiles and any items that have been in contact with reptiles.

(C) Reptiles should be kept out of households or facilities that include children younger than 5 years of age, the elderly, or persons whose immune systems have been weakened by pregnancy, disease (for example, cancer), or certain medical treatments (for example, chemotherapy) [aged <5years or immunocompromised persons]. Families expecting a new child should remove any reptile from the home before the infant arrives.

~~[(D) Reptiles should not be allowed in childcare centers.]~~

(D) ~~[(E)]~~ Reptiles should not be allowed to roam freely throughout the home or living area. Wash and disinfect surfaces that the reptile or its cage has contacted.

(E) ~~[(F)]~~ Reptiles should be kept out of kitchens and other ~~[food-preparation]~~ areas where food or drink is prepared or consumed [to prevent contamination]. Kitchen sinks should not be used to bathe reptiles or to wash their dishes, cages, or aquariums. If bathtubs are used for these purposes, they should be cleaned thoroughly and disinfected with bleach. Wear disposable gloves when washing the dishes, cages, or aquariums.

(4) The sign must also contain a statement that reptiles carry *Salmonella* bacteria, which can make people sick, but reptiles may not appear to be sick.

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 8, 2010.

TRD-201005751

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: November 21, 2010

For further information, please call: (512) 458-7111 x6972



## SUBCHAPTER G. CAGING REQUIREMENTS AND STANDARDS FOR DANGEROUS WILD ANIMALS

### 25 TAC §169.131, §169.132

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes an amendment to §169.131 and new §169.132, concerning the caging requirements and registration for dangerous wild animals.

#### BACKGROUND AND PURPOSE



The amendment to §169.131 and new §169.132 are necessary to comply with Government Code, Chapter 822, Subchapter E, "Dangerous Wild Animals," which requires owners of a dangerous wild animal to keep and confine the animal in accordance with the caging requirements and registration established by the department.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 169.131 has been reviewed and the department has determined that reasons for adopting this section continue to exist because a rule on this subject is needed.

#### SECTION-BY-SECTION SUMMARY

The amendment to §169.131 will provide for a safe, healthy, and humane environment for the animals; prevent escape by the animals; and clarify the minimum caging requirements relating to the structures and outdoor facilities containing dangerous wild animals in compliance with Health and Safety Code, §822.111.

Addition of new §169.132 has been implemented to provide clarification of the submission process of a certificate copy to the department by the holder of a certificate of registration of a dangerous wild animal, as required in Health and Safety Code, §822.106(b). A procedure was established at the time of initial adoption of §169.131 in 2002 that an owner of a dangerous wild animal submitted an annual fee of \$20 per animal to the department to cover the cost of filing a copy of a certificate of registration to the department, as mandated by Health and Safety Code, §822.106(b).

#### FISCAL NOTE

Adolfo Valadez, M.D., MPH, Division Director, Prevention and Preparedness Services, has determined that for each year of the first five-year period that §169.131 will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the section as proposed.

Dr. Valadez has also determined that for each year of the first five-year period that §169.132 will be in effect, there will be an average of \$1,793 collected from owners of dangerous wild animals to cover the costs of filing the copies of certificates of registration, as required by Health and Safety Code, §822.106(b). No fiscal implications to local governments as a result of enforcing and administering the section as proposed.

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Dr. Valadez has been determined that there will be no adverse impact on small businesses or micro-businesses required to comply with §169.131 as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the section. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no anticipated negative impact on local employment.

Dr. Valadez has determined that the proposed fee in §169.132 will have a continuing adverse impact on some small or micro-businesses. However, the impact is estimated to remain on a scale similar to that associated with the procedure that has been in place since 2002. New §169.132 has the same provisions as the long-standing procedure. The fee is \$20 per animal. Due to the low number of registrants and the base cost of maintaining

a tracking system, reduction of the fee to mitigate the impact of the rule is not supported. The department has considered alternatives that would reduce the effect of the fee, but the fee and the method of calculating its amount are set by Health and Safety Code, §822.106, and the department has no flexibility in assessing it. It is difficult to determine how many small businesses and micro-businesses will be required to pay the fee. Many small businesses and micro-businesses that own dangerous wild animals are qualified for one of the many exemptions in Health and Safety Code, §822.102. Over 100 counties prohibit the possession of dangerous wild animals. In addition, there is no data available from a trade association of businesses that own dangerous wild animals, as no such organization exists. There are two business registrants under the current registration scheme who pay \$60 and \$840. The department estimates there are between two and five small businesses that will be subject to the fee and they will pay between \$20 and \$840, depending on how many animals they own. The cost to persons will include an owner of a dangerous wild animal who will continue to pay \$20 per animal to the department to cover the costs of filing a copy of a certificate of registration. There is no anticipated negative impact on local employment.

#### PUBLIC BENEFIT

In addition, Dr. Valadez has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections will be that it enhances public health and safety by keeping dangerous wild animals contained in safe, healthy, and humane environments.

#### REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendment and new rule do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

#### PUBLIC COMMENT

Comments on the proposal may be submitted to Tom Sidwa, DVM, Department of State Health Services, Community Preparedness Section, Zoonosis Control Branch, Mail Code 1956, P.O. Box 149347, Austin, Texas 78714-9347, or by email to Tom.Sidwa@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

#### LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed

by legal counsel and found to be within the state agencies' authority to adopt.

#### STATUTORY AUTHORITY

The amendment and new rule are authorized by Health and Safety Code, §822.111, which requires the department to establish the caging requirements and standards for the keeping and confinement of dangerous wild animals; Health and Safety Code, §822.106(b), which requires the department to charge a fee for filing a certificate of registration for a dangerous wild animal; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of §169.131 implements Government Code, §2001.039.

The amendment and new rule affect Health and Safety Code, Chapters 822 and 1001; and Government Code, Chapter 531.

*§169.131. Caging Requirements and Standards for Dangerous Wild Animals.*

(a) (No change.)

(b) General Requirements.

(1) Primary enclosures for housing dangerous wild animals shall be sufficiently strong to prevent escape and to protect the animal(s) from injury and shall be equipped with perimeter fences [~~structural safety barriers~~] to prevent any public contact with the animal(s). Perimeter fences [~~Structural barriers~~] may be constructed from materials such as fencing, landscaping, or close-mesh wire, provided that materials used are safe and effective in preventing public contact.

(2) (No change.)

(3) A perimeter fence, sufficient to deter entry by the public, shall be a minimum of 8 feet in height and shall completely surround the premises where the animal(s) is housed or exercised outdoors. Perimeter fences constructed of materials, such as chain link or welded wire, that allow objects to be passed through them shall be at least 3 feet from the primary enclosure or appropriately enclosed exercise area.

(c) (No change.)

(d) Primary Enclosure Size and Equipment Requirements. No dangerous wild animal shall be confined in any primary enclosure that contains more individual animals than specified in this section, is smaller in dimension than specified in this section, or is not equipped as specified in this section. The area occupied by pools, ponds, or lakes shall be in addition to the space requirements for the primary enclosure. Specifications in this section also pertain to hybrids of designated species.

(1) Primates.

(A) In addition to species-related requirements of this section, each primary enclosure shall have accessible devices to provide physical stimulation or manipulation compatible with the species. Each device shall be noninjurious and may include, but is not limited to, boxes, balls, mirrors, ~~or~~ foraging items, or pools. The area occupied by pools shall be in addition to the space requirements for the primary enclosure.

(B) - (C) (No change.)

(D) Requirements for specific primate species are as follows:

(i) Baboons. For one animal<sub>2</sub> the primary enclosure shall have a minimum floor area of 100 square feet with a wall or fence at least 8 feet high. For each additional animal<sub>2</sub> primary enclosure size shall be increased by at least 100 square feet.

(ii) Chimpanzees. For one animal<sub>2</sub> the primary enclosure shall have a minimum floor area of 200 square feet with a wall or fence at least 8 feet high. For each additional animal<sub>2</sub> primary enclosure size shall be increased by at least 100 square feet.

(iii) Orangutans. For one animal<sub>2</sub> the primary enclosure shall have a minimum floor area of 200 square feet with a wall or fence at least 10 feet high. For each additional animal<sub>2</sub> primary enclosure size shall be increased by at least 200 square feet.

(iv) Gorillas. For one animal<sub>2</sub> the primary enclosure shall have a minimum floor area of 300 square feet with a wall or fence at least 8 feet high. For each additional animal<sub>2</sub> primary enclosure size shall be increased by at least 200 square feet.

(2) Wild felines.

(A) - (D) (No change.)

(E) Requirements for specific species of wild felines are as follows:

(i) Lions, tigers, and cheetahs.

(I) For one animal<sub>2</sub> the primary enclosure shall have a minimum floor area of 300 square feet with a wall or fence at least 8 feet high. For each additional animal<sub>2</sub> primary enclosure size shall be increased by at least 150 square feet.

(II) Outdoor primary enclosures over 1,000 square feet (uncovered) shall have vertical jump walls at least 10 feet high with a 45-degree inward-angle overhang at least 2 feet wide or jump walls at least 12 feet high without an overhang. The inward-angle fencing shall be made of the same material as the vertical fencing.

(ii) Jaguars, leopards, and cougars.

(I) For one animal<sub>2</sub> the primary enclosure shall have a minimum floor area of 200 square feet with a wall or fence at least 8 feet high. For each additional animal<sub>2</sub> primary enclosure size shall be increased by at least 100 square feet.

(II) (No change.)

(iii) Bobcats, lynxes, ocelots, caracals, and servals. For one animal<sub>2</sub> the primary enclosure shall have a minimum floor area of 80 square feet with a wall or fence at least 8 feet high. For each additional animal<sub>2</sub> primary enclosure size shall be increased by at least 40 square feet.

(3) Bears.

(A) - (C) (No change.)

(D) Requirements [~~Requirement~~] for specific types of bears are as follows:

(i) Sun bears.

(I) For one animal<sub>2</sub> the primary enclosure shall have a minimum floor area of 200 square feet with a wall or fence at least 8 feet high. For each additional animal<sub>2</sub> primary enclosure size shall be increased by at least 100 square feet.

(II) (No change.)

(ii) Black bears and Asiatic bears.

(I) For one animal<sub>2</sub> the primary enclosure shall have a minimum floor area of 300 square feet with a wall or fence at

least 8 feet high. For each additional animal, primary enclosure size shall be increased by at least 150 square feet.

(II) (No change.)

(iii) Brown bears and polar bears.

(I) For one animal, the primary enclosure shall have a minimum floor area of 400 square feet with a wall or fence at least 10 feet high. For each additional animal, primary enclosure size shall be increased by at least 200 square feet.

(II) - (III) (No change.)

(4) Coyotes, jackals, and hyenas [and jackals].

(A) - (B) (No change.)

(C) For one animal, the primary enclosure shall have a minimum floor area of 150 square feet (200 square feet for hyenas) with a wall or fence at least 6 feet high. For each additional animal, primary enclosure size shall be increased by at least 100 square feet.

(D) (No change.)

(E) Uncovered outdoor primary enclosures over 1,000 square feet shall have vertical jump walls at least 8 feet high with a 45-degree inward-angle overhang at least 2 feet wide or jump walls at least 10 feet high without an overhang. The inward-angle fencing shall be made of the same material as the vertical fencing.

{(5) Hyenas.}

{(A) For one animal the primary enclosure shall have a minimum floor area of 200 square feet with a wall or fence at least 6 feet high. For each additional animal primary enclosure size shall be increased by at least 100 square feet.}

{(B) Each primary enclosure shall have an elevated platform(s) large enough to accommodate all animals in the enclosure simultaneously.}

{(C) Outdoor primary enclosures over 1,000 square feet (uncovered) shall have vertical jump walls at least 8 feet high with a 45 degree inward angle overhang at least 2 feet wide or jump walls at least 10 feet high without an overhang. The inward angle fencing shall be made of the same material as the vertical fencing.}

#### §169.132. Registration, Fee.

To comply with Texas Health and Safety Code, §822.106, not later than the 10th day after the date a person receives the certificate of registration required by Texas Health and Safety Code, Chapter 822, the person shall file a clear and legible copy of the certificate of registration with the Texas Department of State Health Services, Zoonosis Control, P.O. Box 149347, Mail Code 1956, Austin, Texas 78714-9347. The fee for filing the certificate is \$20 per animal, submitted with the copy of the certificate.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 8, 2010.

TRD-201005752

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: November 21, 2010

For further information, please call: (512) 458-7111 x6972

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## CHAPTER 200. HEALTHCARE-ASSOCIATED INFECTIONS

### SUBCHAPTER A. CONTROL OF COMMUNICABLE DISEASES

#### 25 TAC §§200.1 - 200.10

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes new §§200.1 - 200.10, concerning the reporting of healthcare-associated infections (HAI).

#### BACKGROUND AND PURPOSE

The new sections are necessary to comply with Health and Safety Code, Chapter 98, "Reporting of Health Care-Associated Infections and Preventable Adverse Events," which requires the department to establish the Texas Healthcare-Associated Infection Reporting System. General hospitals and ambulatory surgical centers are required to report surgical site infections associated with seven surgeries. Pediatric and adolescent hospitals are required to report surgical site infections associated with three surgeries. In addition, general hospitals are required to report the incidence of laboratory-confirmed central line-associated bloodstream infections occurring in any special care setting and the incidence of respiratory syncytial virus (RSV) occurring in any pediatric inpatient unit.

Health and Safety Code, Chapter 98, also requires the department to: (1) establish the Advisory Panel on Healthcare-Associated Infections; (2) provide for the education and training of health care facility staff; (3) review reporting activities of health care facilities to ensure the data provided is valid; (4) compile and make available to the public a summary, by health care facility, of the infections reported by the facility; (5) make the departmental summary available on an Internet website; and (6) inform the public of the option to report suspected healthcare-associated infections to the department.

#### SECTION-BY-SECTION SUMMARY

New §200.1 defines ambulatory surgical centers, central lines, general hospitals, great vessels, pediatric and adolescent hospitals, special care setting, and other words. New §200.2 identifies who shall report; new §200.3 identifies how to report HAI data to the department; new §200.4 identifies the surgeries or procedures from which infections are to be reported, and includes alternative surgical site infections to report if a healthcare facility does not perform at least a monthly average of 50 of any combination of procedures included in §200.4; new §200.5 addresses data to report; new §200.6 and new §200.7 provide language stating when reporting will begin for specific procedures and a schedule for reporting; new §200.8 and new §200.10 address processes for data validation and data verification; and new §200.9 addresses how HAI data will be displayed on the website.

#### FISCAL NOTE

Adolfo Valadez, M.D., M.P.H., Acting Section Director, Infectious Disease Prevention Section, has determined that for each year of the first five years that the sections will be in effect, there will be fiscal implications to state government as a result of enforcing or administering the sections as proposed. There will be costs associated with implementing the Texas Healthcare-Associated Infection Reporting System. For fiscal year (FY) 2010, the estimated cost to the department is \$376,986. For FY 2011, the

estimated cost is \$1,701,308. For FY 2012, the estimated cost is \$963,850 and \$933,724 for FYs 2013 - 2014. There are fiscal implications for local governments that own or manage general hospitals.

#### Ambulatory Surgery Centers.

The Emerging and Acute Infectious Disease Branch conducted a survey of ambulatory surgery centers to collect estimated costs related to the proposed rules. A total of 390 centers are licensed in Texas. The Branch randomly selected 11%, or 43 centers, to be surveyed as a representative sample.

A total of 23 of 43 centers surveyed provided cost estimates related to the proposed rules. The centers were requested to provide costs related to (1) new staff; (2) information technology (IT) equipment; and (3) other costs such as office space, contracts and staff training.

Overall, 22 centers reported no costs for new staff, equipment or other costs for year one, year two, year three, year four and year five. Fifteen of the 22 centers had no costs because they do not perform any of the operative procedures noted in the proposed rules.

Only one of the 23 centers reported costs for one new staff member at \$50,000 for each of the five years. This center also reported costs (\$1,000) in year one for equipment, but no costs for equipment in years two through five.

Using the survey results, it is estimated that only 4.3% (or 17 centers) of the 390 surgery centers would have fiscal costs related to the proposed rules. These costs would be approximately \$51,000 for year one and \$50,000 for years two through five for each of the 17 surgery centers.

#### Local government ambulatory surgery center costs.

One of the 23 surgery centers responding to the survey was owned by a local government. This center reported staffing costs of \$50,000 annually for years one through five. This surgery center reported other costs totaling \$1,000 for year one and no other costs for years two through five. Using the survey results, the cost for government-owned surgery centers would be approximately \$51,000 for year one and \$50,000 for years two through five.

#### Hospital costs.

The Emerging and Acute Infectious Disease Branch conducted a survey of general hospitals in Texas to collect estimated costs related to the proposed rules. A total of 512 hospitals are licensed in Texas. The Branch randomly selected 7%, or 36 hospitals, to be surveyed.

A total of 12 hospitals provided cost estimates related to the proposed rules. Four of the 12 hospitals indicated no costs related to the proposed rules. For the first year, the costs for the new staff and equipment ranged from zero to \$66,200. The average cost for year one was \$21,278. During year two the average cost was \$24,223; year three was \$27,041; year four was \$22,791; and year five was \$22,824.

Using the results of the survey, approximately 341 of the 512 hospitals in Texas would have cost related to the proposed rules. The costs for year one would be \$21,278; for year two, \$24,223; for year three, \$27,041; for year four, \$22,791; and for year five, \$22,824.

#### Local government hospital costs.

Of the 12 hospitals responding to the survey, two hospitals indicated that they were owned by local governments. For the first year, the two hospitals reported new costs ranging from \$15,000 to \$15,320. The average cost for year one was \$15,160. During year two the average cost was \$31,778; year three was \$31,925; year four was \$6,240; and year five was \$6,340.

Using the survey results, it is estimated that only 85 hospitals will be local government owned. These local government-owned hospitals would have an average cost in year one of \$15,160 to implement the proposed rules.

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Dr. Valadez has also determined that there will be an effect on small businesses or micro-businesses required to comply with the sections as proposed.

#### Ambulatory Surgery Centers.

Of the 23 centers responding to the survey, six indicated they were small businesses, e.g. less 100 employees or less than \$6 million in annual gross receipts. None of the six centers reported costs in years one through five associated with the proposed rules. Of the 23 centers responding to the survey, two indicated they were micro businesses. Neither reported costs in years one through five associated with the proposed rules.

Using the survey results, it is estimated that 34.8% of the 390 surgery centers or 136 centers, are small or micro-businesses. There would be no costs related to the proposed rules in years one through five for any of these 136 surgery centers.

#### Hospitals.

Of the 12 hospitals responding to the survey, none reported being a small or micro-business. If any of the 512 licensed hospitals in Texas are small or micro-business, their estimated costs would be similar to the costs reported by the 12 hospitals responding to the survey. These costs were for year one, \$21,278; for year two, \$24,223; for year three, \$27,041; for year four, \$22,791; and for year five, \$22,824.

#### ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

#### PUBLIC BENEFIT

Dr. Valadez has determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The department will compile an annual summary, by health care facility, of the reporting infections. The summary will be made available on an Internet website. Showing infections rates by procedure and health care facility will benefit the public by providing information on infection risk at each health care facility. Efforts by health care facilities to reduce the infection rate for their facility will also benefit the public. The department and other Health and Human Service Commission agencies may use the reported data for research and analysis. In the case of the department, this will consist of earlier identification of outbreaks or infections associated with particular types of procedures, equipment or facilities.

#### REGULATORY ANALYSIS

The department has determined that the proposed rules are not a "major environmental rule" as defined by Government Code,

§2001.0225. Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. The proposed rules are not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed rules do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

#### PUBLIC COMMENT

Comments on the proposal may be submitted to Jeff Taylor, Manager, Emerging and Acute Infectious Disease Branch, Infectious Disease Control Unit, Prevention and Preparedness Services Division, Department of State Health Services, Mail Code 1960, P.O. Box 149347, Austin, Texas 78714-9347, (512) 458-7676 or by email to Jeff.Taylor@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

#### LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

#### STATUTORY AUTHORITY

The new sections are proposed under Health and Safety Code, §98.101, which authorizes the Executive Commissioner to adopt rules to implement Chapter 98; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The new sections affect the Health and Safety Code, Chapters 98 and 1001; and Government Code, Chapter 531.

##### §200.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Ambulatory surgical center--A facility licensed under Texas Health and Safety Code, Chapter 243.

(2) Central line--An intravascular catheter that terminates at or close to the heart or in one of the great vessels which is used for infusion, withdrawal of blood or hemodynamic monitoring.

(3) CMS--Centers for Medicare and Medicaid Services under the United States Department of Health and Human Services.

(4) Comments--Notes or explanations submitted by the healthcare facilities concerning the department's compilation and summary of the facilities' data that is made available to the public as described in the Texas Health and Safety Code, §98.106.

(5) Data--Facility and patient level information reported to the department for the purposes of monitoring healthcare-associated infections.

(6) Data summary--Facility level information prepared by the department for each health care facility required to report in this state to facilitate comparisons of risk-adjusted infection rates.

(7) Department--Department of State Health Services.

(8) Device days--The number of patients in a special care setting who have 1 or more central lines for each day of the month, determined at the same time each day of the reporting quarter.

(9) Facility contact--Person identified by the healthcare facility responsible for coordinating communications related to data submission, verification and approval of data summary.

(10) Facility Identification Number--The unique, distinguishable, uniform number used to identify each health care facility.

(11) General hospital--A hospital licensed under Texas Health and Safety Code, Chapter 241, or a hospital that provides surgical or obstetrical services and that is maintained or operated by the state.

(12) Great vessels--Primary blood vessels to include aorta, pulmonary artery, superior vena cava, inferior vena cava, brachiocephalic veins, internal jugular veins, subclavian veins, external iliac veins, common femoral veins, and in neonates, the umbilical artery or umbilical vein.

(13) Healthcare-associated infection (HAI)--Localized or symptomatic condition resulting from an adverse reaction to an infectious agent or its toxins to which a patient is exposed in the course of the delivery of health care to the patient.

(14) Healthcare-associated infection data--Patient level information identifying the patient, procedures and events required by these rules, infections resulting from those procedures or events, and causative pathogens when laboratory confirmed.

(15) Healthcare facility or facility--A general hospital or ambulatory surgery center.

(16) ICD-9-CM--The ninth revision of the International Classification of Diseases, Clinical Modification that is used to code and classify morbidity data from the inpatient and outpatient records, physician offices.

(17) Inpatient Treatment--An admission to an acute care hospital of greater than 24 hours for treatment of a post operative surgical site infection.

(18) NHSN--Federal Centers for Disease Control and Prevention's National Healthcare Safety Network or its successor.

(19) Pediatric and adolescent hospital--A general hospital that specializes in providing services to children and adolescents, as defined in Texas Health and Safety Code, §241.003.

(20) Reporting quarters--First quarter: January 1 through March 31; Second quarter: April 1 through June 30; Third quarter: July 1 through September 30; Fourth quarter: October 1 through December 31.

(21) Risk adjustment--A statistical method to account for a patient's severity of illness and the likelihood of development of a healthcare-associated infection (e.g., duration of procedure in minutes, wound class, and American Society of Anesthesiology (ASA) score).

(22) Special care setting--A unit or service of a general, pediatric or adolescent hospital that provides treatment to inpatients

who require extraordinary care on a concentrated and continuous basis. The term includes an adult intensive care unit, a burn intensive care unit and a critical care unit.

(23) Validation--The process of comparing data submissions to original patient and facility records to ascertain that data submission processes are accurate.

(24) Verification--Review of data submitted electronically to assure completeness and internal consistency.

§200.2. General Reporting Guidelines for Healthcare-Associated Infection Data.

(a) All general hospitals and ambulatory surgical centers in operation during any part of a reporting quarter described in §200.1 of this title (relating to Definitions) shall submit healthcare-associated infection (HAI) data as specified in §§200.3 - 200.7 of this title to the department.

(b) Facilities that fail to comply with reporting requirements are subject to the enforcement provisions of Texas Health and Safety Code, Chapter 98, Subchapter D.

(c) HAI data submission does not constitute the report of a disease as defined and required in Chapter 97 of this title (relating to Communicable Diseases).

(d) HAI data submission does not constitute annual events or incident reporting as defined in §133.49 of this title (relating to Reporting Requirements), or §135.26 of this title (relating to Reporting Requirements).

(e) The facility shall ensure that the department has accurate email and phone information for a facility contact. Facilities may provide institutional contact information (e.g., IP@hospital.org, 1-800-IN-FECTS). The facility shall ensure that communications from the department are continuously monitored even if the position is vacant for any reason (vacation, illness, etc.).

§200.3. How to Report.

(a) Facilities shall submit HAI data required by this section to a secure, electronic interface designated by the department.

(b) Facilities shall comply with the process of the designated secure, electronic interface to allow the department access to HAI data as specified in §§200.3 - 200.7 of this title.

(c) Facilities shall use their facility identification number to identify their facility in the electronic data and correspondence with the department. Each facility meeting the definition of ambulatory surgical center or general hospital as defined in §200.1(1) and (11) of this title (relating to Definitions) shall have its own facility identification number.

(1) CMS certified health care facilities shall use the CMS-assigned provider number.

(2) If a facility has multiple campuses or a hospital and ambulatory surgical center are associated by ownership, each site shall each use a unique CMS provider number. In the event that a facility is not CMS certified or a facility operates multiple facilities under one CMS number, the facility shall contact the department to receive a facility identification number.

(3) The relationship between CMS-assigned and department-assigned facility identifiers and the name and license number of the facility is public information.

(d) The department shall notify the facility contact by email, fax, or in writing 90 calendar days in advance of any change in requirements for reporting HAI data.

(e) Facilities shall report HAI data on patients who are admitted to the facility for inpatient treatment of a surgical site infection associated with a procedure listed in §200.4 of this title (relating to Which Events to Report) within 30 calendar days of the procedure or within 1 year of the procedure if the procedure involved an implant.

(1) If the facility treating the patient performed the procedure the facility shall report the infection in the designated electronic data interface according to the surveillance methods described by the interface and these rules.

(2) If the facility treating the patient did not perform the surgery the treating facility shall report the infection and the name of the facility alleged to have performed the procedure to the department by email, fax, or in writing. The department shall inform the facility that allegedly performed the procedure. If confirmed, the facility notified by the department shall then report the infection in the designated electronic data interface according to the surveillance methods described and these rules.

§200.4. Which Events to Report.

(a) ICD-9 codes as designated by the federal Centers for Disease Control and Prevention's National Healthcare Safety Network (NHSN) or its successor shall constitute the definition of events listed in this rule. Facilities shall adapt to changes in ICD-9-CM specifications as directed by NHSN and the department.

(b) All general hospitals and ambulatory surgical centers shall report the number of device days and laboratory-confirmed central line-associated primary bloodstream infections in special care settings including the causative pathogen.

(c) General hospitals and ambulatory surgical centers except those described in subsection (d) of this section shall report the HAI data related to the following surgical procedures. The surgical procedure is defined by the NHSN operative procedure and the ICD-9-CM codes linked to that operative procedure.

(1) Colon surgeries (Colon surgery--17.31 - 17.36, 17.39, 45.03, 45.26, 45.41, 45.49, 45.52, 45.71 - 45.76, 45.79, 45.81 - 45.83, 45.92 - 45.95, 46.03, 46.04, 46.10, 46.11, 46.13, 46.14, 46.43, 46.52, 46.75, 46.76, 46.94).

(2) Hip arthroplasties (Hip prosthesis--00.70 - 00.73, 00.85 - 00.87, 81.51 - 81.53).

(3) Knee arthroplasties (Knee prosthesis--00.80 - 00.84, 81.54, 81.55).

(4) Abdominal hysterectomies (Abdominal hysterectomy--68.31, 68.39, 68.41, 68.49, 68.61, 68.69).

(5) Vaginal hysterectomies (Vaginal hysterectomy--68.51, 68.59, 68.71, 68.79).

(6) Coronary artery bypass grafts (Coronary artery bypass graft with both chest and donor site incisions--36.10 - 36.14, 36.19; Coronary artery bypass graft with chest incision only--36.15 - 36.17, 36.2).

(7) Vascular procedures (Abdominal aortic aneurysm repair--38.34, 38.44, 38.64; Carotid endarterectomy--38.12; Peripheral vascular bypass surgery--39.29).

(d) A general hospital or ambulatory surgical center that does not perform at least a monthly average of 50 of any combination of the procedures listed in subsection (c) of this section shall report HAI data relating to all of the three surgical procedures most frequently performed at the facility that are also listed by NHSN. The average number of procedures and the three most frequently performed procedures shall

be determined based on the calendar year prior to the reporting year as determined by facility contact.

(e) Pediatric and adolescent hospitals except those described in subsection (f) of this section shall report the HAI data relating to the following surgical procedures. The surgical procedure is defined by the NHSN operative procedure and the ICD-9-CM codes linked to that operative procedure.

(1) Spinal surgery with instrumentation (Spinal fusion--81.00 - 81.08, 81.62 - 81.64; Laminectomy--03.01, 03.02, 03.09, 80.50, 80.51, 80.53, 80.54+, 80.59, 84.60 - 84.69, 84.80 - 84.85; Refusion of spine--81.30 - 81.39).

(2) Cardiac procedures, excluding thoracic cardiac procedures (Cardiac surgery--35.00 - 35.04, 35.10 - 35.14, 35.20 - 35.28, 35.31 - 35.35, 35.39, 35.42, 35.50, 35.51, 35.53, 35.54, 35.60 - 35.63, 35.70 - 35.73, 35.81 - 35.84, 35.91 - 35.95, 35.98, 35.99, 37.10, 37.11, 37.24, 37.31 - 37.33, 37.35, 37.36, 37.41, 37.49, 37.60; Heart transplant--37.51 - 37.55).

(3) Ventricularoperitoneal shunts including revision and removal of shunt (ventricularoperitoneal shunt--02.2, 02.31 - 02.35, 02.39, 02.42, 02.43, 54.95).

(f) A pediatric and adolescent hospital that does not perform at least a monthly average of 50 of any combination of the procedures listed in subsection (e) of this section shall report the HAI data relating to all of the three surgical procedures most frequently performed at the facility that are also listed by NHSN. The average number of procedures and the three most frequently performed procedures shall be determined based on the calendar year prior to the reporting year. Reporting of HAI data for all three surgeries shall begin for the entire quarter in which the enrollment deadline occurs as specified in §200.6 of this title (relating to When to Initiate Reporting).

(g) Facilities shall also report denominator data for the events identified above for calculation of risk adjusted infection rates as required in Texas Health and Safety Code, §98.106(b). NHSN protocols shall be used for the determination of denominator data.

#### §200.5. Data to Report.

Data required to be submitted in §200.4 of this title (relating to Which Events to Report) shall be reported using the training, enrollment, case definitions and protocols required by the department in coordination with NHSN or its successor. Specific modules and variables will be identified for facilities prior to the enrollment deadline through training, departmental website, and notification of the facility contact. Content or data element changes will be communicated in the same manner 90 calendar days in advance of the change.

#### §200.6. When to Initiate Reporting.

(a) All healthcare facilities shall enroll in the secure, electronic interface within 90 calendar days of the effective date of this rule, or the designation of the secure electronic interface, whichever is later.

(b) Facilities shall submit HAI data beginning with the entire reporting quarter of the effective date in subsection (a) of this section.

(1) All facilities--HAI data relating to central line-associated primary bloodstream infections in special care units.

(2) Ambulatory surgical centers and general hospitals, except pediatric and adolescent hospitals--HAI data relating to knee arthroplasties as defined in §200.4(c)(3) of this title (relating to Which Events to Report) or the three surgical procedures most frequently performed as described in §200.4(d) of this title.

(3) Pediatric and adolescent hospitals--HAI data relating to ventricularoperitoneal shunts as defined in §200.4(e)(3) of this title or

the three surgical procedures most frequently performed as defined in §200.4(f) of this title.

(c) In addition to the data listed in subsection (b) of this section, facilities shall submit the following data beginning January 1, 2012.

(1) Ambulatory surgical centers and general hospitals, except pediatric and adolescent hospitals - HAI data relating to hip arthroplasties as defined in §200.4(c)(2) of this title and coronary artery bypass grafts as defined in §200.4(c)(6) of this title or HAI data relating to the three surgical procedures most frequently performed as described in §200.4(d) of this title.

(2) Pediatric and adolescent hospitals - HAI data relating to cardiac procedures as defined in §200.4(e)(2) of this title or the three surgical procedures most frequently performed as described in §200.4(f) of this title.

(d) In addition to the data listed in subsections (b) and (c) of this section, facilities shall submit the following data beginning January 1, 2013.

(1) Ambulatory surgical centers and general hospitals, except pediatric and adolescent hospitals--HAI data relating to abdominal and vaginal hysterectomies as defined in §200.4(c)(4) and §200.4(c)(5) of this title, colon surgeries as defined in §200.4(c)(1) of this title, and vascular procedures as defined in §200.4(c)(7) of this title or the three surgical procedures and associated infections most frequently performed as described in §200.4(d) of this title.

(2) Pediatric and adolescent hospitals--HAI data relating to spinal surgeries with instrumentation as defined in §200.4(e)(1) of this title or the three surgical procedures most frequently performed as described in §200.4(f) of this title.

(e) Facilities that are required to report after this initial enrollment period (e.g., newly licensed, change in provider status, etc.) shall enroll within 90 calendar days of the receipt of a CMS provider number or a HAI reporting facility identification number and shall submit data beginning with the entire reporting quarter after receipt of the identification number.

#### §200.7. Schedule for HAI Reporting.

(a) Facilities shall submit HAI data according to the following schedule in Table 1.  
Figure: 25 TAC §200.7(a)

(1) HAI data for device days and procedures occurring between January 1 and March 31 shall be submitted no later than May 31 of the same calendar year.

(2) HAI data for device days and procedures occurring between April 1 and June 30 shall be submitted no later than August 31, of the same calendar year.

(3) HAI data for device days and procedures occurring between July 1 and September 30 shall be submitted no later than November 30 of the same calendar year.

(4) HAI data for device days and procedures occurring between October 1 and December 31 shall be submitted no later than February 28 of the following calendar year.

(b) If any of the dates in subsection (a) of this section fall on a weekend or holiday, facilities shall submit on the following business day.

#### §200.8. Verification of Healthcare-associated Infection Data and Correction of Errors.

(a) Data verification.

(1) The department shall establish acceptance criteria to ensure the accuracy and completeness of all data submitted to the department and will make these criteria available.

(2) The department will notify the facility contact by email, fax, or in writing to acknowledge receipt of data and to communicate its acceptability within 15 calendar days after the facility data submission deadline described in §200.7 of this title (relating to Schedule for HAI Reporting). This notification will include specific information on any errors found.

(b) Correction of Errors and Disputes.

(1) Facilities shall correct all identified errors, including data determined to be missing, and resubmit the corrected data through the designated secure electronic interface.

(2) Corrections shall be submitted according to the following schedule.

(A) Not later than June 30 for HAI data for device days and procedures occurring between January 1 and March 31.

(B) Not later than September 30 for HAI data for device days and procedures occurring between April 1 through June 30.

(C) Not later than December 31 for HAI data for device days and procedures occurring between July 1 through September 30.

(D) Not later than March 31 for HAI data for device days and procedures occurring between October 1 through December 31.

(3) If the facility is unable to correct an identified error or disputes one or more of the identified errors, the facility contact shall notify the department by email, fax, or in writing the reasons why these are the best available data within 15 calendar days of receipt of notice of corrections.

(4) Data corrections that occur following publication of a data summary shall be submitted to the department for use in future data compilations.

(c) If any of the dates listed in subsection (b) of this section fall on a weekend or holiday, facilities shall submit on the following business day.

§200.9. Data Summary Display.

(a) Development of data summary.

(1) The department shall compile a data summary for each reporting facility. The data summary shall be made available to the public on an Internet website in a format to be determined by the department.

(2) The data summary shall be based on data submitted by the facility and may include raw numbers for numerator and denominator, rates, risk-adjustments, and state and national comparative data.

(3) Facilities that have failed to submit data or submitted data in a format other than that specified by the department shall be identified in the summary made available to the public.

(4) Data summaries based on data that the department has determined to be inaccurate or incomplete which has not or cannot be corrected by the facility in a timely fashion shall be included in the data summary. Explanatory notes shall be included in the summary to inform the public of the nature of the data deficiencies.

(5) Data displays shall be based on the best available data at the time the summaries are completed. Displays of trends over time may include updated or corrected data that are discrepant with previous summaries.

(b) Facility comments.

(1) Prior to publication of the data summary for public use, the department shall notify the facility contact by email, fax, or in writing of the opportunity to submit comments for publication with the data summary.

(2) The facility contact shall submit comments using the format determined by the department or notify the department by email, fax, or in writing that the facility does not wish to comment.

(3) The comments shall be 1,250 characters in length or less.

(4) The department shall review facility comments to assure that they are concise and pertain only to the facility and the current data. The department may edit comments that are not concise or do not pertain only to the facility and current data.

(5) Comments are due to the department on or before October 30 of the same calendar year for summaries of data collected January 1 through June 30 and on or before April 30 of the following calendar year for summaries of data collected July 1 through December 31.

§200.10. Data Validation.

All data submitted by facilities are subject to data validation. When requested by the department, a healthcare facility shall provide the department access to, copies of and/or information from the facility documents and records underlying and documenting the data submitted, as well as other patient related documentation deemed necessary to validate facility data.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 8, 2010.

TRD-201005755

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: November 21, 2010

For further information, please call: (512) 458-7111 x6972



## **TITLE 31. NATURAL RESOURCES AND CONSERVATION**

### **PART 1. GENERAL LAND OFFICE**

#### **CHAPTER 25. BEACH CLEANING AND MAINTENANCE ASSISTANCE PROGRAM**

##### **31 TAC §§25.1 - 25.3, 25.5, 25.12, 25.13, 25.15, 25.20 - 25.22**

The General Land Office (GLO) proposes amendments to §25.1, relating to Definitions, §25.2, relating to General, §25.3, relating to Administration of Funds, §25.5, relating to Beach Cleaning Responsibility, §25.12, relating to Eligible Costs, §25.13, relating to Extent of State Assistance, §25.15, relating to Payment Procedures, §25.20, relating to Audit, §25.21, relating to Ineligibility, and §25.22, related to Hearing. The proposed amendments incorporate the new responsibility of the state to clean and maintain public beaches under certain circumstances in Texas Natural Resources Code, Chapter 61, Subchapter C, relating to Maintenance of Public Beaches, §61.067, relating to Duty of State, as



amended by Acts 2009, 81st Legislature, Chapter 6, §1, effective September 1, 2009. The proposed amendments also make minor revisions to clarify duties and procedures and to correct formatting and citation errors.

In §25.1, relating to Definitions, the proposed amendment makes minor changes to refer to the beach cleaning and maintenance reimbursement program (program) implemented under the rules as "the program," rather than using several different words and phrases to refer to the same thing. The definition of "clean and maintain" in §25.1(5) is amended to clarify that the employment of lifeguards, beach patrols, and litter patrols is included only for cities and counties, and therefore not to the state.

The proposed amendment to §25.2(b), relating to General, reflects the fact that the funding for the program comes from appropriations to the GLO and the GLO's allocation of appropriated funds to the program.

The proposed amendment to §25.3, relating to Administration of Funds, reflects that the rules relating to the program are found in Subchapter C, rather than Subchapter B, of Chapter 61 of the Natural Resources Code.

The proposed amendment to §25.5, relating to Beach Cleaning Responsibility, changes the title of the section to Responsibilities. It also adds new §25.5(a), which sets forth the state's responsibility to provide assistance to local governments in cleaning and maintaining public beaches, including the duty to clean, maintain and remove debris from a beach in a threatened area in a declaration of a state of disaster issued under Government Code, §418.014. New §25.5(b) clarifies that the responsibility for cities to clean public beaches is found in Natural Resources Code, §61.065. New §25.5(c) clarifies that the responsibility for counties to clean public beaches is found in Natural Resources Code, §61.066. The remaining subsections are renumbered.

The proposed amendments to §§25.12, 25.13, 25.20 and 25.21 correct minor inconsistencies in the language of the rules. The proposed amendment to §25.22, related to Hearing, updates the statutory reference to the Administrative Procedure Act, Government Code, Chapter 2001, and includes the GLO's rules of practice and procedures found in Chapter 2 of this title.

#### FISCAL AND EMPLOYMENT IMPACTS

Helen Young, Deputy Commissioner for Coastal Resources, has determined that, for each year of the first five years the new sections as proposed are in effect, there will be no fiscal implications for the state government. There will also be no fiscal impact on local governments as a result of the proposed sections.

Ms. Young has determined that the proposed rulemaking will not have an effect on the costs of compliance for individuals and small businesses or large businesses. Ms. Young has also determined the proposed rulemaking will have no adverse local employment impact that requires an impact statement pursuant to Texas Government Code §2001.022.

#### PUBLIC BENEFIT

Ms. Young has determined the public will benefit from this proposed rulemaking because it will streamline the vacancy application process and provide the public with a clearer understanding of how the process works. The proposed amendments will also implement the most recent changes to the vacancy statute and provide consistency between the statutes and rules.

#### TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the proposed rulemaking in accordance with Texas Government Code §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. The GLO has determined the proposed rulemaking does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Sections 17 and 19 of the Texas Constitution. Furthermore, the GLO has determined that the proposed rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the new rule.

#### ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the action is not subject to §2001.0225 because it does not exceed express requirements of state law and does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule of which the specific intent is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The proposed rulemaking is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

#### PUBLIC COMMENT

To comment on the proposed rulemaking, please send a written comment to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 463-6311 or email to walter.talley@glo.state.tx.us. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposal.

#### STATUTORY AUTHORITY

The proposed rulemaking is made under Texas Natural Resources Code §61.067(e), which authorizes the GLO to adopt rules reasonably necessary to perform its duties under Chapter 61, Subchapter C.

The proposed rulemaking affects Texas Natural Resources Code Chapter 61, Subchapter C, relating to the maintenance of public beaches. No other statutes, articles, or codes are affected by this proposal.

##### *§25.1. Definitions.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (4) (No change.)

(5) Clean and maintain--The collection and removal of litter and debris, and the supervision and elimination of sanitary and safety conditions which would pose a threat to personal health or safety if not removed or otherwise corrected. For purposes of cities and counties described in this subchapter, the phrase "clean and maintain" includes the employment of lifeguards, beach patrols, and litter patrols.

(6) (No change.)

(7) Participant or sponsor--The city or county which receives assistance under this subchapter ~~[program]~~.

(8) Program--The beach cleaning and maintenance assistance program implemented under this subchapter and Natural Resources Code, Chapter 61, Subchapter C (relating to Maintenance of the Public Beaches).

(9) ~~[(8)]~~ Public beach--Any beach area, whether publicly or privately owned, extending inland from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico to which the public has acquired the right of use or easement to or over such area by prescription, dedication, presumption, estoppel, or has retained a right by virtue of continuous right in the public since time immemorial, as recognized by law and custom. This definition does not include a beach which is not accessible by public road or ferry.

(10) ~~[(9)]~~ Qualified official--The individual authorized to represent the applicant or participant in all contractual agreements.

(11) ~~[(10)]~~ State fiscal year--The period of time beginning September 1 and ending August 31.

#### *§25.2. General.*

(a) (No change.)

(b) The availability of funds for this program is contingent upon appropriations by the legislature to the agency and the agency's allocation of appropriated funds to the program.

#### *§25.3. Administration of Funds.*

The agency is designated as the administering agency for funding of this program, and is empowered to enforce these rules and to distribute in a fair and impartial manner the "state share" of funds to cities and counties in accordance with ~~[the Texas]~~ Natural Resources Code, Chapter 61, Subchapter C ~~[B]~~, this subchapter ~~[chapter]~~, and procedures and accounting methods adopted by the agency.

#### *§25.5. Responsibilities [Beach Cleaning Responsibility].*

(a) It is the responsibility of the state through the agency to provide assistance to local governments in the cleaning of public beaches. For purposes of this section, assistance includes, but is not limited to, the following:

(1) Awards made under this program;

(2) Cleaning and maintaining public beaches, at the sole discretion of the GLO, to maintain the public beach easement; and

(3) Cleaning, maintenance and debris removal from a public beach that is located in an area designated as a threatened area in a declaration of a state of disaster issued under §418.014 of the Government Code.

(b) It is the responsibility of the governing body of any incorporated city, town, or village bordering the Gulf of Mexico to clean and maintain public beaches as provided in Natural Resources Code §61.065.

(c) It is the responsibility of the commissioners court of any county bordering on the Gulf of Mexico to clean and maintain public beaches as provided in Natural Resources Code §61.066.

(d) ~~[(a)]~~ The responsibility for inspection by the agency is vested in the designated agency field office in the area.

(1) ~~[(b)]~~ The designated field office will conduct routine inspection of the area under its authority.

(2) ~~[(e)]~~ The designated field office will furnish a report of inspection activities and any public comment received by the field office concerning beach maintenance. This report will be a general summary as to the method, quality, frequency, and acceptability to which the public beaches are being cleaned and maintained by the participant. Problem areas, repeat discrepancies, and safety hazards will be given special emphasis.

#### *§25.12. Eligible Costs.*

(a) - (d) (No change.)

(e) Costs incurred by coastal cities and counties in implementing beach nourishment projects, conducted under ~~[Texas]~~ Natural Resources Code, Chapter 33, Subchapter H (relating to Coastal Erosion), may qualify as eligible expenses under §25.13(a) of this title (relating to Extent of State Assistance) and for program ~~[BMFP]~~ reimbursement subject to §25.3 of this title (relating to Administration of Funds).

#### *§25.13. Extent of State Assistance.*

(a) - (b) (No change.)

(c) Monies received by an eligible coastal municipality under the Tax Code, §156.2511, shall be included as part of the state share as required by ~~[the Texas]~~ Natural Resources Code, §61.076(c)(2), and must be spent on cleaning and maintaining the beach as required by the Tax Code, §156.2511(b); however, these funds are not eligible for reimbursement from the ~~[BMFP]~~ program as specifically prohibited by ~~[the Texas]~~ Natural Resources Code, §61.076(c)(1).

#### *§25.15. Payment Procedures.*

(a) Payments to participants will be made on a reimbursable basis, and the amount of payment will be computed by the agency. Participants who qualify for no greater than two-thirds reimbursement under ~~[the]~~ Natural Resources Code, §§61.068 - 61.070, will be reimbursed semiannually.

(b) Participants who qualify for 40% reimbursement under ~~[the]~~ Natural Resources Code, §61.080 and §61.081, will be reimbursed semiannually.

#### *§25.20. Audit.*

The audit branch of the finance division of the agency will perform random audits of and shall have access to all participants' records related to its ~~[the]~~ beach cleaning program for the purpose of verifying compliance with the provisions of the program ~~[this chapter and the Texas Natural Resources Code, Chapter 61, Subchapter C]~~.

#### *§25.21. Ineligibility.*

(a) If the agency determines by audit or other method that the participant no longer complies with the requirements of the program ~~[this chapter or the Texas Natural Resources Code, Chapter 61, Subchapter C]~~, it shall notify the participant that further payment will not be made until the agency is satisfied that there is no longer any failure to comply. The agency may withhold funds and require reimbursement to be made for funds claimed and received in violation of the program. ~~[this chapter or the Texas Natural Resources Code, Chapter 61, Subchapter C.]~~

(b) The notice required by subsection (a) of this section must be given:

(1) to the acting head of the participant that is not in compliance with the program ~~[this chapter or the Texas Natural Resources Code, Chapter 61, Subchapter C]~~;

(2) - (3) (No change.)

(c) The notice required by subsection (a) of this section shall be by hand delivery, overnight courier, or by registered or certified mail, return receipt requested, and shall include notice of:

(1) the act or omission that has rendered the participant in violation of the program [~~this chapter or the Texas Natural Resources Code, Chapter 61, Subchapter C~~];

(2) the action required of the participant in order for the participant to be in compliance with the program [~~this chapter or the Texas Natural Resources Code, Chapter 61, Subchapter C~~];

(3) the amount, if any, required to be reimbursed for funds claimed and received in violation of the program [~~this chapter and the Texas Natural Resources Code, Chapter 61, Subchapter C~~]; and

(4) (No change.)

#### *§25.22. Hearing.*

[(a)] Hearings under this subchapter [~~chapter~~] shall be conducted in accordance with the provisions of Government Code, Chapter 2001 (relating to Administrative Procedure), and Chapter 2 of this title (relating to Rules of Practice and Procedure) [~~the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13(a) (Vernon Supp. 1991)~~].

[(b)] All documents shall be filed with the administrative hearings clerk at the following address: Administrative Hearings Clerk, General Land Office, 1700 North Congress Avenue, Room 630, Austin, Texas 78701-1495.

[(c)] The hearing examiner shall determine the date, time, place, and amount of time to be allotted for any hearing to be held under this chapter.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 11, 2010.

TRD-201005779

Trace Finley

Deputy Commissioner, Policy and Governmental Affairs

General Land Office

Earliest possible date of adoption: November 21, 2010

For further information, please call: (512) 475-1859



## PART 4. SCHOOL LAND BOARD

### CHAPTER 154. LAND SALES, ACQUISITIONS, AND TRADES

#### 31 TAC §154.1

The School Land Board (board) proposes an amendment to 31 TAC Part 4, Chapter 154, §154.1, relating to the Sale of Permanent School Fund Land.

#### BACKGROUND AND ANALYSIS OF PROPOSED AMENDMENT

The intent of this rulemaking is to clarify and assist the public in understanding the rules related to sales of permanent school fund land by the board and to incorporate the statutory changes made during the 81st Legislative Regular Session by House Bill (HB) 3461 (Acts 2009, 81st Legislature, Chapter 1175, effective

June 19, 2009) which amended Texas Natural Resources Code §§32.110(a), 51.052 (e) and 51.052(f).

The proposed amendments to §154.1 add language to the definition of "surrounding land" in the rule to clarify that such land must have a common boundary with a particular tract of land approved for sale by the board. The amendments also authorize the board to waive the special fee (an amount equal to one and one-half percent of the bid or sale amount) on land sales to any state agency, board, commission, political subdivision or other governmental entity, consistent with legislative changes. The amendments also substitute the word "special" for the word "statutory" in describing this fee, in order to conform to the language used in Texas Natural Resources Code §32.110.

#### FISCAL AND EMPLOYMENT IMPACTS

Hal Croft, Deputy Commissioner for the GLO's Asset Management Division, has determined that for each year of the first five years the amended section as proposed is in effect, the fiscal implications for state government as a result of enforcing or administering the amended section could vary depending on the amount of land an entity purchased pursuant to Texas Natural Resources Code §32.110, and whether or not the special fee in connection with such purchase was waived by the board. Any fiscal impact to the State is not expected to be significant, however.

Mr. Croft has determined that for each year of the first five years the amended section as proposed is in effect, the fiscal implications for a local governmental entity could vary depending on the amount of land an entity purchased pursuant to Texas Natural Resources Code §32.110, and whether or not the special fee in connection with such purchase was waived by the board. Any fiscal impact on local governments is not expected to be significant, however.

Mr. Croft has also determined that for each year of the first five years the amended section as proposed is in effect, there will be no increase in economic costs to small or large business for compliance.

Mr. Croft has determined that the proposed rulemaking will have no adverse local employment impact that requires an impact statement pursuant to Texas Government Code §2001.022.

#### PUBLIC BENEFIT

Mr. Croft has determined that the public will benefit from the rule clarification provided by the proposed amendment, as well as from the incorporation of changes made by the Texas Legislature to the GLO's governing statutes. There will be no economic cost to persons required to comply with these regulations.

#### ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments to Chapter 154 are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, compe-

tion, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed rulemaking implements legislative changes in Texas Natural Resources Code §§32.110(a), 51.052(e) and 51.052(f) related to conditions for the sale of land and waiver of the special fee on land sales to any state agency, board, commission, political subdivision or other governmental entity.

#### TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the proposed rulemaking in accordance with Texas Government Code §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. The GLO has determined that the proposed rulemaking does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Sections 17 and 19 of the Texas Constitution. Therefore, a detailed takings assessment is not required.

#### PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking, please send a written comment to Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 463-6311 or email to [walter.talley@glo.state.tx.us](mailto:walter.talley@glo.state.tx.us). Written comments must be received no later than 5:00 p.m., 30 days from the date of publication of this proposal.

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Natural Resources Code §32.110, relating to the board's ability to waive the special fee associated with land sales to a state agency, board, commission, political subdivision or other governmental entity, Texas Natural Resources Code §32.062, requiring the board to adopt rules of procedure and rules for sale of land under that chapter, and Texas Natural Resources Code §51.052, providing that the board shall adopt rules to implement the preference right granted to owners of land that surround a tract of land approved for sale by the board.

Texas Natural Resources Code §§32.110(a), 51.052(e) and 51.052(f) are affected and implemented by the proposed amendments to §154.1.

##### *§154.1. Sale of Permanent School Fund Land.*

###### (a) Definitions.

(1) Surrounding land means all of the privately owned property having a common boundary with a particular tract of land approved for sale by the board.

(2) - (4) (No change.)

(b) - (d) (No change.)

(e) Upon approval of the board, payment of the purchase price, payment of the special [statutory] fee, and, if applicable, filing of the survey and the partition agreement, a land award or deed may be issued in accordance with the terms prescribed by the board. The board may waive the special fee on land sales to any state agency, board, commission, political subdivision, or other governmental entity.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 6, 2010.

TRD-201005732

Trace Finley

Deputy Commissioner, Policy and Governmental Affairs  
School Land Board

Earliest possible date of adoption: November 21, 2010

For further information, please call: (512) 475-1859



## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

#### CHAPTER 1. STATE MENTAL RETARDATION AUTHORITY RESPONSIBILITIES

##### SUBCHAPTER D. ADMINISTRATIVE HEARINGS OF THE DEPARTMENT IN CONTESTED CASES

##### **40 TAC §§1.151 - 1.160, 1.162, 1.163**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), the repeal of Chapter 1, Subchapter D, consisting of §1.151, concerning purpose; §1.152, concerning applicability and scope of rules; §1.153, concerning definitions; §1.154, concerning administrative law judge; §1.155, concerning hearing guidelines; §1.156, concerning conduct of hearings--general requirements; §1.157, concerning prehearing procedure; §1.158, concerning evidence and depositions; §1.159, concerning deliberation; §1.160, concerning decisions; §1.162, concerning references; and §1.163, concerning distribution.

#### BACKGROUND AND PURPOSE

HHSC, on behalf of DADS, is proposing new rules that govern hearings under the Administrative Procedure Act (APA) elsewhere in this issue of the *Texas Register*. As part of this proposal, DADS proposes to repeal rules in Chapter 1, Subchapter D, that are no longer required in the rule base.

#### SECTION-BY-SECTION SUMMARY

The repeal of §1.151 deletes the purpose statement for the subchapter.

The repeal of §1.152 deletes language concerning the applicability and scope of the subchapter.

The repeal of §1.153 deletes the definitions for the subchapter.

The repeal of §1.154 deletes the qualifications of an administrative law judge.

The repeal of §1.155 deletes the guidelines for a hearing.

The repeal of §1.156 deletes requirements governing the conduct of a hearing.

The repeal of §1.157 deletes prehearing procedures.

The repeal of §1.158 deletes requirements concerning evidence and depositions.

The repeal of §1.159 deletes the requirements concerning deliberation after a hearing.

The repeal of §1.160 deletes the requirements concerning a decision after a hearing.

The repeal of §1.162 deletes the list of references contained in the subchapter.

The repeal of §1.163 deletes the list of entities to which the subchapter was distributed.

#### FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years after the repeal, there are no foreseeable implications relating to costs or revenues of state or local governments.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed repeal will have no adverse economic effect on small businesses or micro-businesses, because the repeal does not impose any new requirements on entities required to comply with the rule.

#### PUBLIC BENEFIT AND COSTS

Tom Phillips, DADS Chief Operating Officer, has determined that, for each year of the first five years after the repeal, the public benefit expected as a result of repealing the sections is that unnecessary rules will be removed from the DADS rule base.

Mr. Phillips anticipates that there will not be an economic cost to persons who are affected by the repeal. The repeal will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Nancy Porter at (512) 438-4820 in DADS' Legal Services section. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-006, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, TX 78714-9030 or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto:rulescomments@dads.state.tx.us). To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be either (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS' last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing

comments, please indicate "Comments on Proposed Rule 006" in the subject line.

#### STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

§1.151. *Purpose.*

§1.152. *Applicability and Scope of Rules.*

§1.153. *Definitions.*

§1.154. *Administrative Law Judge.*

§1.155. *Hearing Guidelines.*

§1.156. *Conduct of Hearings--General Requirements.*

§1.157. *Prehearing Procedure.*

§1.158. *Evidence and Depositions.*

§1.159. *Deliberation.*

§1.160. *Decisions.*

§1.162. *References.*

§1.163. *Distribution.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 11, 2010.

TRD-201005772

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: November 21, 2010

For further information, please call: (512) 438-3734



## CHAPTER 41. CONSUMER DIRECTED SERVICES OPTION

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §41.103 in Subchapter A, Introduction; §41.239 and §41.241 in Subchapter B, Responsibilities of Employers and Designated Representatives; and §41.335 in Subchapter C, Enrollment and Responsibilities of Consumer Directed Services Agencies, in Chapter 41, Consumer Directed Services Option.

#### BACKGROUND AND PURPOSE

Texas Administrative Code, Title 40, Part 1, Chapter 68, concerning electronic visit verification (EVV) system, is proposed

elsewhere in this issue of the *Texas Register*. Chapter 68 requires an employer and a consumer directed services agency (CDSA) to use an EVV system to document the provision of certain services, including some services offered under the consumer directed services (CDS) option. The proposed amendments revise documentation requirements, such as paper submissions and hand corrections to time sheets, to allow an employer and a CDSA to document services using an EVV system.

#### SECTION-BY-SECTION SUMMARY

The proposed amendments to §41.103, concerning definitions, add a definition of "EVV system" as new paragraph (18) and renumber subsequent paragraphs.

The proposed amendments to §41.239, concerning documentation of services delivered, clarify that documentation generated by an EVV system supplements, with certain exceptions, existing narrative service delivery documentation requirements for an employer or designated representative.

The proposed amendments to §41.241, concerning payment of services, clarify that only the employer or designated representative may approve documentation of services delivered for payment and that, upon receipt of a request from the CDSA for corrected documentation, an employer or designated representative who is using an EVV system is not required to obtain a correction from the employee and submit to the CDSA the corrected and approved documentation of services delivered.

The proposed amendments to §41.335, concerning documentation of services delivered, clarify that a service provider using an EVV system is not required to obtain a dated signature of the employer or designated representative on documentation of services delivered.

#### FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments are in effect, enforcing or administering the amendments does not have foreseeable implications relating to costs or revenues of state or local governments because proposed amendments to Chapter 41 simply clarify the documentation required when an EVV system is used. The use of an EVV system for certain CDS option services will be mandated by Chapter 68, concerning electronic visit verification (EVV) system, which is proposed elsewhere in this issue of the *Texas Register*. The proposal for Chapter 68 explains that DADS has determined that the implementation of EVV has foreseeable implications relating to costs or revenues of state or local government.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments will not have an adverse economic effect on small businesses or micro-businesses, because the changes to Chapter 41 clarify the documentation required when an EVV system is used. The use of an EVV system for certain services will be mandated by Chapter 68, concerning electronic visit verification (EVV) system, which is proposed elsewhere in this issue of the *Texas Register*. The proposal for Chapter 68 explains that DADS has determined that the implementation of EVV could have an adverse economic impact on small businesses or micro-businesses.

#### PUBLIC BENEFIT AND COSTS

Jon Weizenbaum, DADS Deputy Commissioner, has determined that, for each year of the first five years the proposed

amendments are in effect, the public benefit expected as a result of enforcing the amendments is an increase in the accuracy of service delivery documentation and a reduction in billing errors and fraudulent time sheet reporting.

Mr. Weizenbaum anticipates that there is not an economic cost to persons who are required to comply with the proposed amendments. The use of an EVV system for certain services will be mandated by Chapter 68, concerning electronic visit verification (EVV) system, which is proposed elsewhere in this issue of the *Texas Register* and explains the economic cost to persons who are required to comply with the new rules. The amendments will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Elizabeth Jones at (512) 438-4855 in DADS' Center for Policy and Innovation. Written comments on the proposal may be submitted to *Texas Register* Liaison, Legal Services-9R035, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto:rulescomments@dads.state.tx.us). To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS' last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 9R035" in the subject line.

### SUBCHAPTER A. INTRODUCTION

#### 40 TAC §41.103

##### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

##### §41.103. Definitions.

The following words and terms, when used in this chapter, have the following meanings unless the context clearly indicates otherwise:

- (1) - (17) (No change.)

(18) EVV system--Electronic visit verification system. As defined in §68.102(7) of this title (relating to Definitions), an electronic visit verification system that:

(A) allows a service provider to electronically report:

(i) the service recipient's identity;

(ii) the service provider's identity;

(iii) the date and time the service provider begins and ends the delivery of services;

(iv) the location of service delivery; and

(v) tasks performed by the service provider; and

(B) meets other guidelines described on the DADS website at [www.dads.state.tx.us](http://www.dads.state.tx.us).

(19) [(18)] FMS--Financial management services. Services delivered by the CDSA to an employer such as orientation, training, support, assistance with and approval of budgets, and processing payroll and payables on behalf of the employer.

(20) [(19)] Individual--A person enrolled in a program.

(21) [(20)] LAR--Legally authorized representative. A person authorized or required by law to act on behalf of an individual with regard to a matter described in this chapter, including a parent, guardian, managing conservator of a minor, or the guardian of an adult.

(22) [(21)] Minor--A person who is 17 years of age or younger.

(23) [(22)] Non-program resource--A resource other than an individual's program that provides one or more services or items.

(24) [(23)] Parent--A natural, legal, foster, or adoptive parent of a minor.

(25) [(24)] Program--A community services program administered by DADS.

(26) [(25)] Service agreement--A written agreement or acknowledgment between two parties that defines the relationship and lists respective roles and responsibilities.

(27) [(26)] Service area--A geographic area served by a program or specified in a contract with DADS.

(28) [(27)] Service back-up plan--A documented plan to ensure that critical program services delivered through the CDS option are provided to an individual when normal service delivery is interrupted or there is an emergency.

(29) [(28)] Service coordinator--An employee of a mental retardation authority who is responsible for assisting an applicant, individual, or LAR to access needed medical, social, educational, and other appropriate services, including DADS program services. A service coordinator provides case management services to an individual.

(30) [(29)] Service plan--A document developed in accordance with rules governing an individual's program that identifies the program services to be provided to the individual, the number of units of each service to be provided, and the projected cost of each service.

(31) [(30)] Service planning team--A group of people determined based on the requirements of an individual's program. Some DADS programs refer to the service planning team as an interdisciplinary team.

(32) [(31)] Service provider--An employee, contractor, or vendor.

(33) [(32)] Support advisor--A person who provides support consultation to an employer, or a DR, or an individual receiving services through the CDS option.

(34) [(33)] Support consultation--An optional service that is provided by a support advisor and provides a level of assistance and training beyond that provided by the CDSA through FMS. Support consultation helps an employer to meet the required employer responsibilities of the CDS option and to successfully deliver program services.

(35) [(34)] Vendor--A person selected by an employer or DR to deliver services, goods, or items, other than a direct service to an individual. Examples of vendors include a building contractor, electrician, durable medical equipment provider, pharmacy, or a medical supply company.

(36) [(35)] Working day--Any day except Saturday, Sunday, a state holiday, or a federal holiday.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 11, 2010.

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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3734



## SUBCHAPTER B. RESPONSIBILITIES OF EMPLOYERS AND DESIGNATED REPRESENTATIVES

### 40 TAC §41.239, §41.241

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The amendments affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§41.239. *Documentation of Services Delivered.*

(a) (No change.)

(b) In addition to documentation generated by an EVV system, documentation of services delivered [Documentation] must include:

(1) time sheets for employees who are not required to document their time worked using an EVV system as required by Chapter 68 of this title (relating to Electronic Visit Verification (EVV) System);

(2) - (5) (No change.)

(c) Unless using an EVV system as required by Chapter 68 of this title:

(1) ~~[(e)]~~ ~~an [An]~~ employer or DR must review documentation of services delivered and obtain corrections or revisions before submitting the document to the CDSA for payment; ~~[-]~~

(2) ~~[(d)]~~ the [The] person making an error or omission on documentation [a document] of services delivered must:

(A) ~~[(1)]~~ enter the omission; and

(B) ~~[(2)]~~ for an error, make correction by:

(i) ~~[(A)]~~ making one line through the error;

(ii) ~~[(B)]~~ entering the correction; and

(iii) ~~[(C)]~~ initialing and dating the correction; and [-]

(3) ~~[(e)]~~ [To approve the document for payment,] the employer or DR must sign and date the documentation of services delivered [document] after the last entry or correction made by the service provider to signify approval for payment of the documentation of services delivered.

*§41.241. Payment of Services.*

(a) Only the employer or DR may approve the documentation of services delivered described in §41.239 of this chapter (relating to Documentation of Services Delivered).

(b) ~~[(a)]~~ An employer or DR must submit to the CDSA approved documentation of services delivered for payment on or before the due date established by the CDSA.

(c) ~~[(b)]~~ Unless using an EVV system as required by Chapter 68 of this title (relating to Electronic Visit Verification (EVV) System), an [An] employer or DR must obtain a correction and submit the corrected and approved documentation of services delivered to the CDSA within three calendar days after receiving a request for corrected documentation of services delivered [notice] from the CDSA.

~~[(e)]~~ Only the employer or DR may approve a document submitted to the CDSA for payment.

(d) ~~[If a document is submitted electronically to the CDSA, the employer or DR must also submit a copy of the document, signed and dated by the service provider and the employer or DR, to the CDSA, by fax or United States mail.]~~ The CDSA does not pay for ~~[future]~~ services delivered ~~[by the service provider]~~ until receipt of ~~[the]~~ approved documentation [document].

(e) (No change.)

(f) DADS does not pay, and the CDSA must not pay, for purchases or services that:

(1) - (8) (No change.)

(g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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## SUBCHAPTER C. ENROLLMENT AND RESPONSIBILITIES OF CONSUMER DIRECTED SERVICES AGENCIES

### 40 TAC §41.335

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

*§41.335. Documentation of Services Delivered.*

(a) The CDSA must verify that the service provider:

(1) - (2) (No change.)

(3) unless using an EVV system as required by Chapter 68 of this title (relating to Electronic Visit Verification (EVV) System), has a dated signature of the employer or DR on all documentation of services delivered.

(b) Documentation must include:

(1) time sheets for employees who are not required to document their time using an EVV system as required by Chapter 68 of this title;

(2) - (5) (No change.)

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3734



## CHAPTER 68. ELECTRONIC VISIT VERIFICATION (EVV) SYSTEM

### 40 TAC §§68.101 - 68.103

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), new Chapter 68, §§68.101 - 68.103, concerning Electronic Visit Verification (EVV) System.

#### BACKGROUND AND PURPOSE

The purpose of the new chapter is to require a DADS contractor providing certain services and a Consumer Directed Services (CDS) option participant receiving certain services to use an electronic visit verification (EVV) system approved by DADS. In addition, the proposed new chapter requires a CDS agency (CDSA) to make an EVV system approved by DADS available to a CDS option participant.

An EVV system approved by DADS will verify that a scheduled visit of a person providing a service described in the proposed new chapter occurs as described in the service plan of the individual receiving the service. An EVV system also documents the precise time the scheduled visit begins and ends and the specific tasks performed. By requiring the use of an EVV system for certain services, DADS expects to realize an increase in the accuracy of service delivery documentation and a reduction in billing errors and fraudulent reporting of time worked.

#### SECTION-BY-SECTION SUMMARY

Proposed new §68.101, concerning application, describes the services for which an EVV system must be used.

Proposed new §68.102, concerning definitions, defines the terms used in this chapter.

Proposed new §68.103, concerning use and availability of EVV system, describes the persons and entities that must use an EVV system and the requirements for using an EVV system.

#### FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed new sections are in effect, enforcing or administering the sections has potential implications relating to costs or revenues of state or local governments. By increasing the accuracy with which services are documented, EVV technology reduces the potential for funds to be lost to billing errors and fraudulent reporting of time worked. While it is not possible to accurately estimate the amount that may be realized by reducing losses related to administrative errors and fraudulent reporting, initial research and anecdotal evidence indicate that the potential savings have been significant enough to encourage service providers and state governments to implement and maintain EVV systems.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed new sections could have an adverse economic effect on small businesses or micro-businesses, because mandating implementation of EVV may cause contractors to incur initial costs resulting from the purchase of necessary system components (e.g., hardware, software, etc). It is also possible that mandating implementation of EVV will cause contractors to incur recurring system maintenance costs and EVV transaction costs.

DADS' records indicate that approximately 2000 businesses provide the services subject to the proposed new sections. DADS does not have specific data regarding the number of these businesses that are formed for the purpose of making a profit, the number of their employees, or the amount of their gross receipts, which is necessary to determine how many of them meet the definitions of "small business" or "micro-business."

DADS cannot determine the specific initial or recurring costs that would be incurred by contractors because those costs vary significantly, depending on the type of system implemented by the provider.

Several options were considered in determining how to achieve the purpose of the proposed rules. Current statute does not mandate that DADS implement EVV technology in the affected programs. Therefore, DADS considered not imposing any new rules regarding EVV. DADS determined this option was not consistent with its responsibility as a steward of state and federal funds. DADS also considered the possibility of developing a proposal that would promote EVV as a readily available alternative to traditional timekeeping methods. This approach would encourage EVV use but would not mandate its implementation. DADS determined this option would not specifically address the need to limit funds lost through fraud. Finally, DADS considered the possibility of imposing a one percent rate cut on the programs in question. While this option would have resulted in cost reductions, DADS determined a one percent rate cut would have created greater impact on businesses and would not have addressed the need to improve timekeeping and payment accuracy.

#### PUBLIC BENEFIT AND COSTS

Jon Weizenbaum, DADS Deputy Commissioner, has determined that, for each year of the first five years the new sections are in effect, the public benefit expected as a result of enforcing the sections is an increase in the accuracy of service delivery documentation and a reduction in billing errors and fraudulent time sheet reporting.

Mr. Weizenbaum anticipates that there will be an economic cost to persons who are required to comply with the new sections as noted above. The new sections will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Calvin Green at (512) 438-3765 in DADS' Center for Program Coordination. Written comments on the proposal may be submitted to *Texas Register* Liaison, Legal Services-9R035, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto:rulescomments@dads.state.tx.us). To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS' last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing com-

ments, please indicate "Comments on Proposed Rule 9R035" in the subject line.

#### STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The new chapter affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

#### §68.101. Application.

This chapter applies to the following services:

(1) in the Community Based Alternatives (CBA) Program, personal assistance services and in-home respite, as described in Appendix C of the CBA Program waiver application (found on the CBA Program page of the DADS website);

(2) in the Community Living Assistance and Support Services (CLASS) Program, residential habilitation and in-home respite, as described in Appendix C of the CLASS Program waiver application (found on the CLASS Program page of the DADS website);

(3) in the Consolidated Waiver Program (CWP):

(A) personal assistance services and in-home respite, as described in Appendix C of the CWP waiver application relating to the nursing facility level-of-care (found on the CWP page of the DADS website); and

(B) residential habilitation and in-home respite, as described in Appendix C of the CWP waiver application relating to the intermediate care facility for persons with mental retardation level-of-care (found on the CWP page of the DADS website);

(4) in the Deaf Blind with Multiple Disabilities (DBMD) Program, residential habilitation and in-home respite, as described in Appendix C of the DBMD Program waiver application (found on the DBMD Program page of the DADS website);

(5) in the Medically Dependent Children Program (MDCP), in-home respite and adjunct services, as described in Appendix C of the MDCP waiver application (found on the MDCP page of the DADS website); and

(6) in the Primary Home Care (PHC) Program:

(A) a community attendant service (CAS), as described in §47.3(3) of this title (relating to Definitions);

(B) a family care (FC) service, as described in §47.3(11) of this title; and

(C) a primary home care (PHC) service, as described in §47.3(20) of this title.

#### §68.102. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

(1) CDS option--Consumer directed services option. As defined in §41.103(8) of this title (relating to Definitions), a service delivery option in which a CDS option participant or legally authorized representative employs and retains a service provider and directs the delivery of a program service, including a service described in §68.101 of this chapter (relating to Application).

(2) CDS option participant--A person who receives a service described in §68.101 of this chapter using the CDS option.

(3) CDSA--Consumer directed service agency. As defined in §41.103(9) of this title, an entity that contracts with DADS to provide financial management services to a CDS option participant.

(4) Contractor--An entity that contracts with DADS to provide a service described in §68.101 of this chapter.

(5) DADS--The Department of Aging and Disability Services.

(6) DADS website--The website at [www.dads.state.tx.us](http://www.dads.state.tx.us).

(7) EVV system--Electronic visit verification system. An electronic visit verification system that:

(A) allows a service provider to electronically document:

(i) the service recipient's identity;

(ii) the service provider's identity;

(iii) the date and time the service provider begins and ends the delivery of services;

(iv) the location of service delivery; and

(v) tasks performed by the service provider; and

(B) meets other guidelines described on the DADS website.

(8) Service provider--A person who provides a service described in §68.101 of this chapter and who is employed or contracted by:

(A) a contractor; or

(B) a CDS option participant.

#### §68.103. Use and Availability of EVV System.

(a) DADS may require a contractor, a CDSA, and a CDS option participant to use an EVV system in:

(1) each DADS region; or

(2) a part of one or more DADS regions.

(b) A contractor, CDSA, or CDS option participant required to use EVV:

(1) must use an EVV system approved by DADS to document the provision of a service described in §68.101 of this chapter (relating to Application), except under circumstances described in guidelines on the DADS website;

(2) must comply with DADS' requirements for documentation of information not documented by an EVV system in the provision of a service described in §68.101 of this chapter; and

(3) must comply with applicable federal and state laws regarding confidentiality of information regarding a person receiving a service described in §68.101 of this chapter.

(c) A contractor or CDSA required to use EVV:

(1) must ensure that documentation that may be generated by an EVV system is available for review in accordance with the contract; and

(2) must provide, upon request and at no charge, a copy of documentation that may be generated by an EVV system to DADS and any other federal or state agency authorized to have access to such documentation.

(d) A CDSA must make an EVV system approved by DADS available to a CDS option participant.

(e) A contractor may use confidential information, including the name and contact information of a person receiving a service described in §68.101 of this chapter from another contractor, only for the authorized purpose for which the confidential information was legally obtained.

(f) At any time, DADS may access an EVV system used by a contractor or CDS option participant.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 11, 2010.

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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3734



## CHAPTER 91. HEARINGS UNDER THE ADMINISTRATIVE PROCEDURE ACT

### 40 TAC §§91.1 - 91.8

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), new Chapter 91, consisting of §§91.1 - 91.8, concerning hearings under the Administrative Procedure Act (APA).

#### BACKGROUND AND PURPOSE

The purpose of the new sections is to provide rules governing certain issues related to hearings under the APA, Texas Government Code, Chapter 2001. The rules of the former Texas Department of Human Services governing hearings under the APA were administratively transferred to HHSC in September 2004, as 1 Texas Administrative Code (TAC) Chapter 357, Subchapter I, "Formal Appeals." This subchapter was repealed by HHSC and replaced with a new subchapter governing APA hearings, 1 TAC Chapter 357, Subchapter I, "Hearings Under the Administrative Procedure Act." The new HHSC rules state that certain hearing issues are governed by the rules of the "referring agency." DADS is a referring agency and these rules address issues related to APA hearings.

#### SECTION-BY-SECTION SUMMARY

Proposed new §91.1 contains the purpose statement for the chapter.

Proposed new §91.2 contains the definitions for the chapter.

Proposed new §91.3 contains the types of contested cases heard by the State Office of Administrative Hearings (SOAH) and certain requirements for those cases.

Proposed new §91.4 contains the types of contested cases heard by the HHSC Appeals Division and certain requirements for those cases.

Proposed new §91.5 contains the requirements governing the review of a proposal for decision in a contested case.

Proposed new §91.6 contains the requirements governing the issuance and finality of a decision in a contested case.

Proposed new §91.7 describes the requirements governing a motion for a rehearing in a contested case.

Proposed new §91.8 contains the requirements governing a judicial review of a final decision in a contested case.

#### FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed new sections are in effect, enforcing or administering the new sections does not have foreseeable implications relating to costs or revenues of state or local governments.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed new sections will not have an adverse economic effect on small businesses or micro-businesses, because the proposal does not impose new requirements on entities required to comply with the rules.

#### PUBLIC BENEFIT AND COSTS

Tom Phillips, DADS Chief Operating Officer, has determined that, for each year of the first five years the new sections are in effect, the public benefit expected as a result of enforcing the new sections is that DADS rules will address certain issues related to hearings under the APA originating at DADS. Unnecessary rules will be removed from the DADS rule base.

Mr. Phillips anticipates that there will not be an economic cost to persons who are required to comply with the new sections. The new sections will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Nancy Porter at (512) 438-4820 in DADS' Legal Services section. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-006, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto:rulescomments@dads.state.tx.us). To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be either (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS' last working day of the comment period; or (3) faxed or e-mailed by midnight on

the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 006" in the subject line.

#### STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The new sections implement Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

##### §91.1. Purpose.

The purpose of this chapter is to describe procedures for hearings under the Administrative Procedure Act, Texas Government Code, Chapter 2001, relating to contested cases.

##### §91.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context indicates otherwise.

- (1) ALJ--Administrative law judge. Unless otherwise specified, ALJ means both a SOAH ALJ and an HHSC ALJ.
- (2) Commissioner--The commissioner of DADS.
- (3) Contested case--A contested case, as defined in Texas Government Code, §2001.003, to which DADS is a party.
- (4) DADS--The Department of Aging and Disability Services.
- (5) HHSC--The Texas Health and Human Services Commission.
- (6) Party--DADS or another person named or admitted to participate in a contested case.
- (7) PFD--Proposal for decision.
- (8) SOAH--The State Office of Administrative Hearings.
- (9) TAC--Texas Administrative Code.

##### §91.3. Contested Case Heard by SOAH.

(a) SOAH hears a contested case arising from the following DADS programs, services or activities:

- (1) primary home care services;
- (2) community attendant services;
- (3) day activity and health services;
- (4) the Community-Based Alternatives Program;
- (5) the Community Living Assistance and Support Services Program;
- (6) the Deaf-Blind Multiple Disabilities Program;
- (7) the Medically Dependent Children Program;
- (8) the Consolidated Waiver Program;
- (9) social services authorized by Title XX of the Social Security Act (42 United States Code §§1397 - 1397f);

(10) In-Home and Family Support services for a person without a diagnosis of mental retardation;

(11) the Program of All-Inclusive Care for the Elderly;

(12) licensure, certification, or contracting of a nursing facility, including a determination related to the Resource Utilization Group Classification System or other utilization review;

(13) hospice services;

(14) licensure or certification of an intermediate care facility for persons with mental retardation;

(15) licensure of a nursing facility administrator;

(16) licensure of an assisted living facility;

(17) licensure of an adult daycare facility;

(18) licensure of a home and community support services agency;

(19) the nurse aide registry;

(20) the nurse aide training and competency evaluation program;

(21) the employee misconduct registry; and

(22) the medication aide program.

(b) Before a contested case described in subsection (a) of this section is transferred to SOAH:

(1) the HHSC Appeals Division has exclusive jurisdiction over the case;

(2) 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act) and this chapter govern the case; and

(3) the parties may conduct discovery in accordance with 1 TAC Chapter 357, Subchapter I.

(c) The director of the HHSC Appeals Division transfers a contested case described in subsection (a) of this section to SOAH upon request for a hearing date by either party.

(d) SOAH conducts hearings in accordance with 1 TAC Chapter 155 (relating to Rules of Procedure) and this chapter.

(e) A SOAH ALJ issues a PFD in accordance with 1 TAC Chapter 155.

(f) If a party files exceptions to a PFD or a reply to exceptions, the party must comply with 1 TAC Chapter 155.

##### §91.4. Contested Case Heard by HHSC.

(a) The HHSC Appeals Division hears a contested case other than one described in §91.3(a) of this chapter (relating to Contested Case Heard by SOAH).

(b) The HHSC Appeals Division conducts a hearing in accordance with 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act) and this chapter.

(c) An HHSC ALJ schedules a hearing upon request for a hearing date by either party.

(d) An HHSC ALJ issues a PFD in accordance with 1 TAC §357.497 (relating to Proposals for Decision, Exceptions, and Replies) within 60 days after the hearing record is closed.

(e) If a party files exceptions to a PFD or a reply to exceptions, the party must comply with 1 TAC §357.497.

§91.5. Review of Proposal for Decision.

(a) The commissioner or the commissioner's designee reviews a PFD issued by an ALJ, exceptions to the PFD, and a reply to the exceptions. The commissioner or commissioner's designee may change a finding of fact or conclusion of law, or may vacate or modify an order issued by the ALJ only if the commissioner or designee determines:

(1) that the ALJ did not properly apply or interpret applicable law, rule, policy provided to the ALJ, or prior administrative decision;

(2) that the ALJ relied on a prior administrative decision that is incorrect and should not be relied upon; or

(3) that a technical error in a finding of fact should be corrected.

(b) The commissioner or the commissioner's designee states in writing the specific reason and legal basis for a change made in accordance with this section.

§91.6. Issuance and Finality of Decision.

(a) After reviewing a PFD, the commissioner or the commissioner's designee issues a signed decision in a contested case. The decision either:

(1) adopts the findings of fact and conclusions of law contained in the PFD; or

(2) makes changes in accordance with §91.5 of this chapter (relating to Review of Proposal for Decision).

(b) The commissioner or the commissioner's designee mails the decision by first class mail and by certified mail, return receipt requested, to the parties or their representatives to their last known addresses. A party or representative is presumed to have been notified of the decision on the third day after the date on which the decision is mailed.

(c) In accordance with Texas Government Code, §2001.144, a decision in a contested case is final:

(1) if a motion for rehearing is not filed in accordance with §91.7 of this chapter (relating to Motion for Rehearing), on the last date a motion for rehearing can be filed in accordance with §91.7 of this chapter;

(2) if a motion for rehearing is filed in accordance with §91.7 of this chapter, on the date:

(A) an order overruling the motion for rehearing is signed; or

(B) the motion for rehearing is overruled by operation of law;

(3) if DADS finds that an imminent peril to the public health, safety, or welfare requires immediate effect of a decision, on the date the decision is signed; or

(4) on the date specified in the decision, if all parties agree to the specified date in writing or on the record and the specified date is not before the date the decision is signed or later than the 20th day after the date the decision is signed.

(d) If a decision is final under subsection (c)(3) of this section, the commissioner or the commissioner's designee recites in the decision the finding made under subsection (c)(3) of this section and the fact that the decision is final and effective on the date signed.

§91.7. Motion for Rehearing.

A motion for rehearing is governed by Texas Government Code, §2001.146, as follows:

(1) A party may file a motion for rehearing. A motion for rehearing must be in writing and must be received by the commissioner or the commissioner's designee within 20 days after the date the party or party's representative is notified of a decision in accordance with §91.6(b) of this chapter (relating to Issuance and Finality of Decision).

(2) A party may file a reply to a motion for rehearing. A reply must be in writing and be filed with the commissioner or the commissioner's designee not later than the 30th day after the date on which the party or party's representative is notified of a decision in accordance with §91.6(b) of this chapter.

(3) The commissioner or the commissioner's designee acts on a motion for rehearing not later than the 45th day after the date on which the party or party's representative is notified of a decision in accordance with §91.6(b) of this chapter, or the motion for rehearing is overruled by operation of law.

(4) The commissioner or the commissioner's designee may by written order extend the time for filing a motion for rehearing or a reply, or for acting on a motion for rehearing under this section, except an extension may not extend the period for acting on a motion for rehearing beyond the 90th day after the date on which the party or the party's representative is notified of a decision in accordance with §91.6(b) of this chapter.

(5) If the commissioner or the commissioner's designee issues an order extending the time for filing a motion for rehearing or a reply, or for acting on a motion for rehearing under this section, the motion for rehearing is overruled by operation of law on the date specified in the order. If the order does not specify a date, the motion for rehearing is overruled by operation of law 90 days after the date on which the party or party's representative is notified of a decision in accordance with §91.6(b) of this chapter.

§91.8. Judicial Review.

(a) In accordance with Texas Government Code, §2001.145, a decision that is final under §91.6(c)(2) - (4) of this chapter (relating to Issuance and Finality of Decision) is appealable; however, a timely motion for rehearing is a prerequisite to appeal a decision that is final under §91.6(c)(2) of this chapter.

(b) In accordance with Texas Government Code, §2001.171, a person who has exhausted all administrative remedies at DADS and who is aggrieved by a final decision in a contested case is entitled to judicial review under Texas Government Code, Chapter 2001.

(c) In accordance with Texas Government Code, §2001.176(b)(3), filing a petition to initiate judicial review of a contested case does not affect the enforcement of a final decision for which the manner of review authorized by law is other than trial de novo.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 11, 2010.

TRD-201005771

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: November 21, 2010

For further information, please call: (512) 438-3734

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# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 16. ECONOMIC REGULATION

### PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

#### CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

##### SUBCHAPTER I. TRANSMISSION AND DISTRIBUTION

##### DIVISION 1. OPEN-ACCESS COMPARABLE TRANSMISSION SERVICE FOR ELECTRIC UTILITIES IN THE ELECTRIC RELIABILITY COUNCIL OF TEXAS

###### 16 TAC §25.193

The Public Utility Commission of Texas (commission) adopts an amendment to §25.193, relating to Distribution Service Provider Transmission Cost Recovery Factor (TCRF), with changes to the proposed text as published in the April 16, 2010, issue of the *Texas Register* (35 TexReg 2909). The amendment requires a distribution service provider (DSP) to include in its rates an adjustment that reflects the difference between (1) the amount of transmission service providers' (TSPs) commission-approved wholesale transmission costs that are paid by the DSP and not included in the base rates of the DSP and (2) the revenues recovered through the DSP's TCRF. Project Number 37909 is assigned to this proceeding.

The commission received written comments on the amendment from AEP Texas Central Company, AEP Texas North Company, CenterPoint Energy Houston Electric LLC, Oncor Electric Delivery Company LLC, and Texas-New Mexico Power Company (collectively, Joint DSPs); City of Houston (COH); the Steering Committee of Cities Served by Oncor (Cities); the Coalition of Regulatory Entities (CORE); Electric Transmission Texas LLC, Lone Star Transmission LLC, and Wind Energy Transmission Texas LLC (collectively, Interested TSPs); Office of Public Utility Counsel (OPUC); the Retail Electric Provider Coalition (REP Coalition); Sharyland Utilities, L.P. (Sharyland); and Texas Industrial Energy Consumers (TIEC).

###### *Workshop to Discuss Modified Proposal*

On July 29, 2010, the commission staff, after reviewing parties' filed initial comments and reply comments on the published proposal, conducted a workshop to discuss a modified version of the proposal. Commission staff put forward this modified version (the "modified proposal") in an attempt to constructively ad-

dress and respond to certain of the major concerns expressed by parties in initial and reply comments. Prominent among these concerns was (1) the legality of the provision in the published proposal that would allow a utility to temporarily implement its requested TCRF amount as filed rather than the amount ultimately approved by the commission, (2) the potential complexity arising from the subsequent true-up of requested rates and commission-approved rates, and (3) the additional complexity related to the determination of carrying costs on true-up amounts. The modified proposal addresses these concerns primarily by requiring an earlier filing date for TCRF filings--thereby ensuring that a DSP implements only commission-approved (rather than requested) TCRF amounts--and omitting carrying charges from the TCRF recovery entirely.

Both the published proposal and the modified proposal achieve the same fundamental objective: allow a DSP to recover certain increases in wholesale transmission costs that TSPs pass through to the DSP as a result of the TSPs' rate cases and interim transmission cost updates. The modified proposal achieves this objective by allowing a DSP to include in its TCRF amount an adjustment that reflects the under- or over-recovered TCRF transmission costs accumulated over a prescribed six-month period. The DSP then includes the adjustment amount in its next TCRF filing and recovers it in six equal monthly installments beginning with the effective date of the updated TCRF.

The total time period over which a DSP accumulates and recovers a given adjustment amount is 16 months: the six-month period during which the DSP accumulates the adjustment amount, the four-month period between the end of the six-month accumulation period and the eventual inclusion of the adjustment in the TCRF rate (this period encompasses the time required for the DSP's preparation and filing of the TCRF update and the commission's decision thereon), and the six-month period during which the DSP actually recovers the adjustment amount. The modified proposal does not provide for carrying costs on the adjustment amount at any time during the 16-month period.

The modified proposal is the basis of the adopted rule; its application and responsiveness to parties' initial and reply comments on the published proposal are further explained below in the summary of general comments. Also included below, following the summary of general comments on the published proposal, is a summary of the oral and written comments that were received at and after the workshop and that relate to the modified proposal specifically.

###### *General Comments on Published Amendment*

###### *Purpose and Need for Amendment*

Joint DSPs urged the commission to adopt the amended rule, expressing support for their position by describing how changes

in the TSP's transmission service rates occur as a result of interim transmission cost of service (TCOS) updates pursuant to §25.192 or when final rates are approved in general rate cases. Joint DSPs stated that, throughout the year, wholesale transmission charges change as a result of changes in transmission service rates, and that the transmission service rates are collected from all DSPs once new rates are approved by the commission. To facilitate the payment and recovery of wholesale transmission charges, the commission's rules provide that a DSP must pay the TSPs for wholesale transmission services provided for the benefit of retail electric providers (REPs) and the DSP's other customers. Joint DSPs explained that DSPs recover from REPs the changes to wholesale transmission charges resulting from changes in transmission service rates through the TCRF, which may be updated only twice per year on March 1 and September 1, and that because changes to transmission service rates can occur at anytime during a year, the changes in the TCRF do not coincide with changes to wholesale transmission rates. The Joint DSPs stated that the end result of this process is that DSPs make payments to TSPs that the DSPs cannot recover. Joint DSPs provided the example of a TCOS update that becomes effective on April 1 but that is not reflected in the DSPs' TCRFs until September 1; under the commission's current rules, DSPs can never recover the wholesale transmission costs incurred between April 1 and September 1. Joint DSPs submitted that although the DSPs serve as nothing more than billing and collection agents for the transmission services provided by the TSPs, under the commission's existing rules the DSPs have no means to avoid such monetary losses. Joint DSPs stated that the level of losses has generally increased over time, observing that in 2002, the total wholesale TCOS in ERCOT was \$901,432,020, while the recently approved total wholesale TCOS in ERCOT for 2010 was \$1,543,031,760. Joint DSPs commented that these losses are likely to increase in the future as TSPs construct transmission projects both for competitive renewable energy zones (CREZ) and non-CREZ growth-related purposes, and the proposed amendment would allow DSPs the opportunity to recover the full costs they pay to the TSPs for the transmission service provided by the TSPs for the benefit of REPs and end-use customers. Joint DSPs additionally pointed out that the published proposal would provide REPs and end-use customers with certainty regarding TCRF changes by requiring the DSP to implement its requested change, with any difference between the TCRF rate requested and the rate ultimately approved by the commission reflected in a subsequent TCRF filing.

Interested TSPs echoed the basic points of Joint DSPs' comments and stated that they support the published proposal because it addresses the concerns of DSPs and REPs about timely recovery of transmission charges passed through the interim TCOS and TCRF mechanisms.

Cities, TIEC, and OPUC opined that the apparent rationale for this change is to eliminate--not just minimize--the regulatory lag that results from transmission cost increases experienced by DSPs, but that neither the commission nor the DSPs have presented evidence that this change is necessary to avoid severe financial distress or financial harm affecting DSPs. Cities, TIEC, and COH argued that Texas law recognizes regulatory lag as an inherent part of utility ratemaking and that, in moderation, regulatory lag can provide beneficial incentives for improved cost controls on the part of the utility. Cities observed that the provisions would enable the utility to be insulated from deviations between actual and projected TCRF revenue collections, whether caused by weather or economic events. TIEC expressed a similar ob-

servation. OPUC, TIEC, and COH stated that the TCRF available to DSPs under the existing rule is a generous cost recovery mechanism that is more than sufficient to allow "timely" recovery of wholesale transmission costs, as envisioned by PURA (Public Utility Regulatory Act) §35.004(d). TIEC and OPUC stated that when one type of cost increases for a utility, that increase is often offset by load growth or decreases in other costs, and that these types of relationships are the reason for the general policy against piecemeal ratemaking, because a utility's cost increases and offsetting decreases can be properly explored only through a comprehensive rate proceeding. TIEC, Cities, and COH opined that, unlike other costs, the existing rule allows DSPs to account for increases in wholesale transmission costs without undergoing a full rate case, and this interim TCRF adjustment mechanism greatly reduces DSPs' regulatory lag and shifts risk to consumers by allowing DSPs to change an isolated component of their rates without a thorough vetting of their entire costs of service. COH contended that several features of the proposed revision are contrary to PURA and sound regulatory policy.

Joint DSPs stated in reply that "severe financial harm" or "financial distress" is hardly the appropriate standard, and the proposed amendment would do nothing more than allow DSPs the opportunity to recover the full costs they pay to the TSPs for transmission service and for the benefit of REPs and end-use customers. Joint DSPs stressed that these costs result from commission-approved rates that the DSPs are required to pay to the TSPs and that the DSPs do not receive or benefit from these services and have no control over these costs whatsoever. Accordingly, Joint DSPs averred, such costs should be recovered from those who receive the services provided. Joint DSPs reiterated that they essentially serve as nothing more than a billing agent for the recovery of transmission costs, and they should not be at risk of loss in performing that function. Joint DSPs further replied that the shortfall of TCRF revenue compared to incremental transmission expense for the Joint DSPs is well documented and completely ignored by OPUC, TIEC, Cities, and COH. Joint DSPs also reiterated that the onset of hundreds of millions of dollars in annual wholesale transmission costs related to the investment in CREZ-related transmission projects in the near future will exacerbate the losses currently being experienced, and that commenters opposed to the amendment are willing to accept the energy savings and environmental benefits from the wind generation being brought to market by the CREZ projects, but would require the DSPs to bear the risk of the associated regulatory lag. Joint DSPs contended that while parties argue that "there is no justification for allowing DSPs to guarantee dollar-for-dollar recovery of those costs at customers' expense," to impose the transmission costs on the parties who have caused those costs to be incurred, rather than some third-party billing agent, is a fundamental ratemaking principle.

#### *Commission Response*

The commission agrees with Joint DSPs that DSPs essentially serve as billing and collection agents for passed-through TCRF costs and, under the commission's current rules, have no ability to avoid such costs or address and manage the regulatory lag that exists with respect to these costs. This aspect distinguishes a DSP's TCRF costs from the DSP's costs recovered through base rates. The commission additionally agrees that, because of expected investment in CREZ facilities, passed-through transmission costs to DSPs will likely increase over the next several years, thereby exacerbating the amount of losses currently borne by DSPs for services they do not provide and over which

they have no control. The commission's adoption of the modified proposal allows DSPs to recover, but not over-recover, the additional transmission costs flowed through by TSPs.

#### *Commission's Authority to Authorize Temporary Rates*

TIEC, Cities, and CORE argued that allowing DSPs to charge a rate that is different from the one that is ultimately approved by the Commission would violate the Commission's obligation under PURA §36.003(a) to ensure that every rate charged by a utility is just and reasonable. Cities provided an example of the way that the published proposal could be abused by noting that a utility that desires additional cash flow could file a proposed tariff based upon an excessive TCRF amount that would be collected until the next true-up proceeding, without any remedy for the commission to suspend the collection of a clearly excessive rate. CORE commented that if interest is charged on under-recoveries or if the entirety of over-collected amounts is not refunded to end-use customers, the proposed amendment would be confiscatory. CORE additionally contended that §35.004 does not expressly provide for temporary rates, and the commission does not have the authority to order temporary rates that may be inconsistent with rates that are just and reasonable. CORE noted that §35.004 states only that the commission "may approve wholesale rates that may be periodically adjusted to ensure timely recovery of transmission investment," and that this does not give the commission the authority to violate §36.003 by ensuring that DSPs have immediate recovery of transmission investment or providing REPs with pricing certainty. CORE also opined that implementing temporary rates that would be in effect for at least six months after the updated TCRF is approved has the appearance of retroactive ratemaking. CORE asserted that the published proposal would violate the commission's statutorily imposed duty to ensure that all rates are just and reasonable, and that this statutory mandate should take precedence against the goal of eliminating regulatory lag and creating pricing certainty for REPs. CORE further contended that the commission has no duty to eliminate all regulatory lag for DSPs or to create pricing certainty for REPs. Cities stated that deferring the impact of commission-ordered changes to the TCRF update is unprecedented and inconsistent with proper regulatory practice. TIEC and Cities opined that exposing customers to these risks for the purpose of providing additional, unnecessary price certainty for REPs is exceedingly poor public policy, and the automatic adjustment mechanism should be rejected.

Joint DSPs disagreed with the contentions that the true-up mechanism is impermissible under PURA, and argued that the commission can implement temporary or interim rates that are subject to later true-up. Joint DSPs observed that various rates are implemented without the commission finding them to be "just and reasonable," noting that bonded rates and interim rates are examples of rates that are implemented and subject to later true-up. Joint DSPs cited the additional example of transition charges, which are effective immediately, approved pursuant to securitization financing orders, and filed by the utility under various interim true-up proceedings; any necessary corrections to the true-up adjustment, because of mathematical errors in the calculation of such adjustment or otherwise, are made in future true-up adjustment proceedings. Joint DSPs additionally replied that fuel factor revision proceedings are "limited to the issue of whether the petitioning electric utility has appropriately calculated its proposed fuel factors," as provided by §25.237(c)(2). Joint DSPs noted that the commission does not examine the reasonableness of the proposed costs or rates in such a proceeding, but rather, "the reasonableness of the

fuel costs that an electric utility has incurred will be periodically reviewed in a reconciliation proceeding, as described in §25.236 of this title." Joint DSPs argued that, in sum, rates are implemented on an interim basis and subject to refund in a number of instances, and there is no reason why the commission cannot do the same with TCRF adjustments.

#### *Commission Response*

In contrast to the provisions of the published proposal that enable a DSP to implement its filed TCRF amount prior to commission approval of the request, the modified proposal allows the DSP to implement only the amount the commission has actually authorized. Therefore, with regard to parties' concerns regarding the implementation of rates that have not been commission-approved, the commission's adoption of the modified proposal as the basis for the amended rule renders these concerns moot.

#### *Carrying Costs and REPs' Pass-Through of Over-Recovery Credit*

COH expressed its belief that extending the TCRF provisions to allow for an adjustment to collect any under-recoveries by the TCRF factor in the prior six-month period and to allow interest on under-recoveries is excessive and appears to favor the DSP. COH observed that once TSPs begin filing major TCOS rate cases for CREZ facilities, the true-up adjustment would result in continual increases to the TCRF. COH expressed general concern that any credits resulting from an over-recovery of costs will not be passed through to the ratepayers by REPs, noting that REPs are currently not required to pass through the associated TCRF charges or credits and that without such a requirement, REPs would pass through any increased TCRF charges but would not necessarily pass through any credits. Cities and CORE agreed with these concerns and suggested that the commission could address this point by developing true-up tariffs that would require the REPs to pass through the credits to end users, but Cities noted that this would add a layer of complexity to the true-up procedure contemplated in the amendment.

The REP Coalition and Joint DSPs pointed out that, in the published proposal, any credit resulting from over-recovery will be used to offset the TCRF rate charged to customers in the next revision of the TCRF rate; therefore, when a REP receives the line-item charge from the DSP for the TCRF, any over-recovery will not result in a credit going to the REPs, but will simply reduce the otherwise applicable TCRF rate charged to the REPs. Joint DSPs noted that this fact is made plain in the TCRF formula set out in subsection (c) of the published proposal, and thus CORE's concern is without merit.

#### *Commission Response*

The modified proposal adopted by the commission contains no provision for carrying costs nor does it result in the creation of a separate credit amount. Therefore, with regard to parties' concerns that allowing carrying costs is excessive and that the true-up provision contemplated in the published proposal could result in a credit that REPs might not flow through to customers, the commission's adoption of the modified proposal renders these issues moot.

#### *Implementation of Temporary Rates to Enhance Pricing Certainty for REPs*

TIEC argued that allowing DSPs to automatically implement their as-filed TCRF increases for the purpose of providing price certainty for REPs is completely unwarranted and should not be adopted. TIEC contended that REPs have been able for years



to successfully market and price their products under the current rule, which already allows bi-annual TCRF updates, and the proposed changes to the rule would not increase the number of interim TCRF adjustments per year. TIEC stated that allowing DSPs to automatically implement their requested TCRF increases would result in DSPs charging more than their commission-approved transmission costs during certain time periods, which is inappropriate and will shift risk and costs to customers.

Joint DSPs stated that these comments miss the point of the issue, which is not whether REPs will be able to predict what the TCRF increase will be for any given DSP in its next TCRF filing four or five months in the future, but whether the process by which a DSP's filing will be approved without modification, on an interim basis subject to later true-up, provides REPs with adequate notice and certainty as to exactly what TCRF will be implemented once the DSP files its request. Joint DSPs opined that the published proposal provides the REPs with that notice and certainty, but stated that if the question had been directed at the impact of the true-up proceedings on future TCRF filings, then the size of any true-ups should be relatively small. Joint DSPs pointed out that transmission and distribution costs as a whole are only about 25-30% of a REP's total charges, with transmission costs being only a portion of that, TCRF revenues being only a portion of that, and any true-up amounts only a portion of that. Joint DSPs averred that a DSP will only be requesting a modification to its TCRF to reflect a change in the transmission costs it is paying to TSPs, so any true-up amount (and interest) will simply be one component of that overall change.

The REP Coalition stated that the published proposal provides sufficient pricing certainty and predictability, because REPs will have notice of the new TCRF 45 days in advance of its effective date. The REP Coalition asserted that the key point with respect to this issue is that any changes to be implemented by the DSP will be known with sufficient notice so that the REPs can incorporate the changes in their invoices to end-use customers, and that an absence of that certainty would undermine the substantive rules that allow a REP to pass through TSP and related charges.

#### *Commission Response*

The commission agrees with the REP Coalition that ensuring sufficient notice of rate changes to REPs is important for REP pricing decisions. Providing REPs greater pricing certainty reduces their risks, and therefore enables them to lower the prices they charge their customers. The modified proposal adopted by the commission achieves this objective by providing REPs with notice of TCRF changes 45 days before the new rate takes effect.

#### *Filing schedules for TSPs*

TIEC, Cities, and CORE stated that if the Commission seeks closer alignment of TCRF recovery and interim TCOS updates, the approach taken in the published proposal is not the best solution. TIEC, Cities, and CORE referred to the published proposal in Project Number 37519 (Rulemaking Proceeding to Amend PUC Subst. R. §25.192(g), Relating to Transmission Service Rates), and stated that published proposal allows TSPs to submit interim TCOS updates twice per year, rather than once (the commission has now adopted this provision). TIEC observed that it and other parties in that rulemaking argued that if the commission authorizes bi-annual interim TCOS updates, such updates should be implemented on designated dates aligned with the TCRF update schedule. TIEC stated that doing so would virtually eliminate any regulatory lag between TCOS and TCRF

updates, and would fully resolve the issue that the commission seeks to address here without requiring any changes to §25.193. Cities and CORE expressed similar sentiments.

Interested TSPs and Sharyland acknowledged that while this rulemaking is not the right venue for comments on the interim TCOS rulemaking, to the extent that the commission considers comments from CORE, Cities, and TIEC recommending that the commission adopt a fixed schedule for filing interim TCOS adjustments, Interested TSPs and Sharyland requested that the commission consider their comments as well. Interested TSPs and Sharyland stated that the recommendation by CORE, Cities, and TIEC would leave TSPs in a worse position than they are under the current interim TCOS procedure. Interested TSPs and Sharyland stated that a fixed filing schedule would destroy essential flexibility with respect to the filing of interim TCOS adjustments, limit TSPs to filing on specified dates regardless of when their facilities are placed into service, and increase regulatory lag rather than reduce it. Sharyland and Interested TSPs stated that the apparent purpose of the proposed (now adopted) rule in Project Number 37519 is to reduce regulatory lag for interim TCOS adjustments, but that the recommendation to establish a fixed schedule for interim TCOS filings would do exactly the opposite. Sharyland submitted that, in some circumstances, a fixed filing schedule could add as much as nearly six months to the regulatory lag associated with such filings. Interested TSPs commented that, ironically, the published rule in this proceeding that would permit DSPs to true-up the difference between TCRF revenues and costs eligible for TCRF recovery is designed to alleviate regulatory lag that *arises from the fixed schedule for TCRF filings* (Interested TSPs' emphasis). Interested TSPs contended that the recommendation by TIEC, Cities, and CORE would create the very same types of problems for TSPs by establishing a fixed schedule for interim TCOS filings.

Joint DSPs stated that they do not agree with the recommendation to coordinate TCRF filings with TSPs' updated interim TCOS filings. Joint DSPs noted that such a recommendation completely ignores the situation where changes in transmission costs recovered through the TCRF arise from changes in TSP base rates as the result of a general rate case, and that surely those commenters do not intend to limit by rule the TSP's statutory right to file a general rate case at any time. Joint DSPs stated that, moreover, having updated TCOS filings all made at the same time would likely present problems for commission staff in reviewing those filings on a timely basis, and TSPs cannot readily time projects to be done at two points during the year.

Joint DSPs held that adopting prescriptive dates for when each TSP can file its updated TCOS filing would reduce TSPs' scheduling flexibility and thereby increase the regulatory lag associated with updated TCOS filings, contrary to the amendments being considered (now adopted) in Project Number 37519.

#### *Commission Response*

In the rule adopted in Project Number 37519, the commission declined to include a specific filing schedule for TSPs' interim TCOS filings. The commission agrees with Joint DSPs that, even if a filing schedule for interim TCOS filings had been or were at some point in the future adopted, such a policy would not take into account the timing of rate changes resulting from a base rate proceeding.

#### *Adjustments to TCRF Formula to Account for Load Growth and Class Allocation Factors*

TIEC stated that if the commission makes any amendments to its rules in this proceeding, it should adjust the TCRF formula to properly account for load growth and changes in the appropriate class allocations. TIEC opined that several changes to the TCRF formula are necessary to ensure that it properly accounts for load growth and class changes since the last adjustment. First of all, TIEC argued, the class allocator used for the TCRF formula should be amended to take into account the appropriate class allocations at the time of the TCRF update, to reflect the fact that some classes may grow much faster than others and result in classes paying more than their share of transmission charges if the class allocators are not updated. Additionally, TIEC commented that the billing determinants should be updated to better account for load growth. TIEC recommended changes to the rule language to achieve these objectives, and TIEC submitted that these modifications should be made regardless of whether the commission makes any other changes to the existing rule. CORE, Cities, and OPUC similarly commented that the published proposal does not appear to consider the possible increase in a DSP's base revenues that offset increases to wholesale transmission costs. Cities, CORE, and OPUC disagreed, however, with TIEC's proposal that class allocation factors should be changed outside of a base-rate case, observing that TIEC proposes to update allocation factors for customer classes with IDR meters, and estimate allocation factors for other classes. Cities, CORE, and OPUC opined that while it is possible that IDR meters will allow more accurate measures of four coincident peak (4CP) loads for those classes, that does not necessarily translate into more accurate allocation factors, as each class's allocation factor, which is a ratio, is dependent on the 4CP loads of other classes, and because the class allocation factors must sum to 100%, a change in the load of one class will simply shift costs to other classes. Cities, CORE, and OPUC commented that any estimates that update non-IDR class loads are likely to be based on simplistic assumptions that are inaccurate and may be unreliable. Cities and OPUC argued that the complexities of TIEC's suggested updating of class allocation factors are more suitable for litigation in a general rate case, not a TCRF proceeding.

Joint DSPs stated that TIEC's proposal to amend the class allocators to reflect the appropriate class allocations at the time of the TCRF update should be rejected. Joint DSPs commented that updating the class allocators has nothing to do with removing regulatory lag, and Joint DSPs observed that TIEC itself noted that the number and timing of TCRF updates will not be changing; rather, only the amounts to be charged will be impacted. Moreover, Joint DSPs stated that the allocation factors are related to the 4CPs occurring in the DSP's last base rate case, and TIEC's proposal would thus have the effect of having the base rate transmission costs allocated using one set of allocation factors while the transmission costs recovered through the TCRF would be recovered using a different set of allocation factors. Joint DSPs submitted that a single set of allocation factors should apply to all wholesale transmission costs, whether recovered through base rates or the TCRF. Joint DSPs additionally noted that TIEC's proposal would require DSPs to calculate new allocation factors that, for rate classes that are not 100% metered with interval data recorder meters, would require the use of load research data that has not previously been reviewed by the commission. Joint DSP's pointed out that this would result in a contentious and time-consuming proceeding, in direct conflict with the purpose of the published proposal. Joint DSPs submitted that, in sum, the administrative burden that would be im-

posed on these semi-annual filings would greatly outweigh any possible benefit to having updated class allocation information.

Joint DSPs also replied that the impact of various changes (weather, economic conditions, increased taxes, etc.) on base rate costs and revenues is reviewed by the commission in the utilities' annual (quarterly for Oncor) Earnings Monitoring Reports. Joint DSPs asserted that rather than assuming that base rate revenues will be higher than anticipated, the better course of action is for the commission to ensure that DSPs recover the level of transmission costs in excess of that included in rates, continue to monitor the utilities' earnings and, should one of them significantly over-earn, begin a commission inquiry into that utility's rates. Joint DSPs argued that to purposefully maintain a regulatory system that has resulted in inadequate TCRF revenues over time is not reasonable.

#### *Commission Response*

As stated by the commission previously, DSPs essentially serve as billing and collection agents for passed-through TCRF costs and, under the commission's current rules, have no ability to avoid such costs or address and manage the regulatory lag that exists with respect to these costs. Therefore, the load growth adjustment advocated by TIEC would be inappropriate. In addition, changes to the class allocations would be inappropriate in a TCRF proceeding. As stated by the Joint DSPs, TIEC's proposal would require DSPs to calculate new allocation factors that would require the use of load research data that has not previously been reviewed by the commission, and consideration of these issues in a TCRF update could result in a contentious and time-consuming proceeding.

#### *Adjustments to Rate of Return*

The REP Coalition commented that when the commission adopted the TCRF rule during the development of rate design for the unbundled cost of service (UCOS) cases prior to the start of competition, the commission recognized that the adopted TCRF did not address the risk to DSPs of under- and over-collection of transmission service charges. According to the REP Coalition, the commission stated at that time that the risk would be considered when the utility's rate of return was determined. The REP Coalition cited an example of the commission doing this in Docket Number 22350, which was the UCOS proceeding case for TXU Electric Company (now Oncor Electric Delivery). The order in that case states:

The Commission concludes, however, that an upward adjustment to the ROE of 0.5% is appropriate. This adjustment accounts for the following: (1) the Commission decision in the rate design phase of this proceeding; (2) potential rating uncertainty due to higher debt, based on the adoption of 60% debt and 40% equity ratio for capital structure in this proceeding; and (3) a risk premium recalculation as recommended by Commission Staff witness Martha Hinkle.

The REP Coalition stated that the changes proposed in this rule-making would eliminate the risk associated with the under- and over-collection of the transmission service charges for the first time since the inception of the TCRF. The REP Coalition argued that it must therefore be assumed that in subsequent rate cases the commission considered this risk premium in setting the return on equity. The REP Coalition stated that, consequently, a proper reduction to a DSP's return on equity should occur in future rate proceedings if the commission approves in this rulemaking the proposed changes that would eliminate the risk of regulatory lag.

Cities similarly held that the current authorized returns on equity for DSPs are based on the regulatory lag that existed prior to this rulemaking, and that by providing for total elimination of regulatory lag associated with DSP transmission cost recovery, the revisions shift the risk from the DSP's investors to the DSP's customers. Cities contended, therefore, that the amendment should also address the manner in which DSPs' authorized rates of return will be reduced to reflect the reduced regulatory lag. TIEC and CORE agreed with the viewpoints of the REP Coalition and Cities regarding the reduction of regulatory lag and its effect on return on equity.

Joint DSPs strongly disagreed with the comments suggesting that adoption of the amendment should result in a reduction to the DSPs' future authorized returns on equity. Joint DSPs acknowledged the REP Coalition's comments describing how the commission provided, at the time of unbundling and in recognition of the risk of under-recovery of transmission charges, an explicit risk premium to returns on equity otherwise found to be reasonable. Joint DSPs pointed out, however, that in more recent cases, the commission has not included any such risk premium but has simply adopted the return on equity resulting from standard discounted-cash-flow and risk-premium analyses as applied to the appropriate "comparable utility" group. Joint DSPs submitted that, in essence, the risk of the DSPs not recovering the full amount of TCRF amounts it pays to TSPs is not reflected in current authorized returns on equity; thus, implementing the proposed amendment will in fact do nothing more than bring the TCRF recovery process in line with the unadjusted returns on equity that the commission has adopted in recent general rate cases and make the transmission cost recovery process consistent with the risks embedded in the DSPs' returns on equity. Joint DSPs held that, in light of the current mismatch between TCRF under-recoveries and the failure of current returns on equity to reflect that risk, adoption of the proposed amendment should have no impact on the DSPs' authorized returns on equity.

#### *Commission Response*

The commission agrees with Joint DSPs that, in rate cases since the UCOS proceedings, authorized rates of return have generally been based upon "comparable company" analyses, and the commission has not made any explicit increases to ROEs to reflect additional risk related to the existing TCRF recovery process. The commission additionally agrees with Joint DSPs that the rule amendment will serve to make the transmission cost recovery process more consistent with the risks embedded in the DSPs' returns on equity. Accordingly, the commission declines to include in the rule an explicit provision to adjust the rate of return to reflect the amendment to the TCRF recovery process. The commission notes, however, that in rate-of-return recommendations in general rate cases, parties are free to make arguments regarding the impact of the amendment.

#### *Language Clarity*

For clarity and consistency, the REP Coalition recommended that the rule refer to "customers" instead of "ratepayers," rather than using both terms interchangeably. CORE opined that the REP Coalition's requested change highlights the problem of amending the rule to include true-up proceedings that may result in refunds due to "ratepayers" (*i.e.*, the end-use customer) but that are retained by the DSP's "customers" (*i.e.*, the REPs).

#### *Commission Response*

The adopted rule does not contain the word "ratepayers"; therefore, the REP Coalition's comments regarding clarity and con-

sistency are moot. Because the modified proposal adopted by the commission does not allow the temporary implementation of TCRF rates that have not been approved--and therefore does not create a situation in which refunds are due to ratepayers--CORE's concerns in this regard are moot.

#### *Response to Commission Question*

In addition to the published proposal, the commission requested that parties submit responses to the following question:

*Are the provisions in this rule sufficient to provide certainty and predictability regarding price changes to both retail electric providers and customers?*

Joint DSPs submitted that the proposed provision in §25.193(b)(1) that requires the DSP to implement its requested TCRF amount, regardless of whether the Commission ultimately approves a different amount (with the difference to be reflected in a subsequent TCRF filing), provides 45 days' notice of the actual rate that will be implemented, thereby providing more than adequate certainty and predictability for both REPs and customers.

Cities commented that although some provisions of the published proposal are intended to increase predictability for REPs, those provisions are not likely to be particularly effective in achieving the intended purpose, and that furthermore, those provisions also exacerbate the impact of regulatory lag upon DSPs. Cities opined that from a consumer perspective, the higher the TCRF adjustment, the more adverse the impact, and the apparent attempt to improve predictability generally delays the recognition of commission adjustments to the filed request until the next TCRF adjustment date.

CORE responded that the provision in subsection (b)(2) that requires the commission to order the DSP to temporarily implement a requested amount until its subsequent TCRF filing does not provide certainty or predictability regarding price changes for REPs or customers, but rather the provision increases the likelihood for surcharges and credits related to reconciling the TCRF; additionally, interest on the over- and under-recoveries would add an additional variable to consider when determining rates in the future. CORE contended that not knowing whether a surcharge or credit will ultimately be necessary once an amount is approved adds uncertainty to pricing for REPs and end-use customers, particularly if interest is collected on top of the over- or under-recovered amount, as the published amendment proposes. CORE held that REPs and customers will not be paying commission-approved transmission costs but will continually be playing catch-up to the eventual commission-determined "just and reasonable" rates. CORE further stated that the reconciliation process should require a DSP to again change its rates at the next available TCRF update regardless of whether it otherwise would have filed for an update to its transmission costs. CORE held that the reconciliation of the requested amount with the commission-approved amount would ultimately require another two TCRF updates, because in the subsequent TCRF filings, not only would balances from over- and under-recoveries be reconciled, additional adjustments related to increased transmission investments would be requested. CORE submitted that such a process would add complexity to calculating the actual cost that a customer ultimately pays for transmission, thereby reducing pricing certainty and predictability.

OPUC commented that the 45-day window seems reasonable for REPs, but its impact is not so clear when retail customers are considered. OPUC commented that customers rely on this kind

of information from their REP, but OPUC finds no requirement in the commission's consumer protection rules requiring the REP to notify its customers of these kinds of future rate changes. OPUC suggested that it might be a good business practice to keep customers informed in order to avoid "rate shock." The REP Coalition stated that it believes the comprehensive pricing disclosure provisions adopted in 2009 as part of the rulemaking to amend §25.475 adequately address the issue of customer notice concerning retail price changes and no additional changes are needed in this rule.

TIEC stated that both customers and REPs have appropriate price certainty under the existing §25.193, as both the existing rule and the published proposal allow bi-annual, scheduled TCRF updates. TIEC contended, therefore, that even if the proposed changes were adopted, they would not result in distribution rates being adjusted any more frequently than they are now and, as a result, there is no reason to allow DSPs to automatically implement their requested TCRF increases for the sake of "price certainty." TIEC stated that allowing DSPs to automatically implement their requested TCRF changes, subject to future true-up, will shift risk and costs to customers without providing any justifying benefit. TIEC stated that DSPs would be authorized under the published proposal to charge a rate that is different from what the commission approves, and then refund or surcharge the difference at a later time, potentially to a different group of customers, and such a process would create less price certainty for customers, result in intergenerational inequities, be inconsistent with traditional ratemaking principles, and violate the commission's duty under §36.003(a) to ensure that every rate charged by a utility is just and reasonable.

The REP Coalition disagreed with TIEC's contention that existing §25.193 provides appropriate price certainty. The REP Coalition provided information indicating that, during 2009 and 2010, REPs received between three and seven calendar days' notice of the final approved TCRF rates, and that although different REPs may have different internal timelines for their billing systems, seven calendar days or less is not sufficient for a REP to incorporate TDU rate revisions into retail offers, which must be prepared weeks before they are introduced into the market.

The REP Coalition expressed support for the rate certainty and notice provisions afforded by the published proposal, and commended the commission and its staff for proposing a rule amendment that provides REPs with 45 days' notice of TCRF rate changes. The REP Coalition stated, however, that the published proposal applies only to the DSP TCRF rate schedule and not other DSP rate schedules. The REP Coalition commented that in general a process that permits semi-annual DSP rate adjustments with a minimum of 45 days' notice for all rate changes will improve certainty and predictability for REPs and their customers. The REP Coalition urged the commission to employ, in any future order in which a new rate is approved or an existing rate is changed, standardized ordering language that will provide REPs with a minimum of 45 days' notice of both the amount and the effective date of the new rate.

CORE agreed that providing a period of rate certainty is a viable approach, but REPs can have more certainty in their prices without basing those prices on rates that have not been reviewed and approved by the commission to be just and reasonable; this would also eliminate the need for a true-up proceeding and avoid situations in which the rule could be confiscatory. CORE recognized that knowledge of effective dates for regulatory rate changes in advance of those changes is critical to REPs, which

are entitled under the commission's rule to incorporate regulatory rate changes in their prices.

TIEC stated that the REP Coalitions' request for 45 days' notice of all retail rate changes is beyond the scope of this rulemaking, but if the commission seeks to address the REP Coalition's notice request with respect to TCRF adjustments, it can be alternatively accomplished by requiring DSPs to wait 45 days from commission approval of a rate change to implement that change. TIEC stated that a 45-day implementation delay would not have a financial impact on the DSPs, and that this would be a more reasonable way to address the REPs' concerns than the automatic adjustment mechanism contained in the published proposal.

Joint DSPs stated that whether to effectively provide 45 days' notice to the REPs by mandatory, interim approval of the TCRF filing made by the DSP, or to continue the current process whereby the proposed TCRF change is reviewed and is subject to revision prior to approval and implementation, is a subjective decision to be made by the commission. Joint DSPs submitted, however, that the REP Coalition's proposals to require additional notice of other types of rate changes by DSPs and to limit the number of instances each year in which those rate changes can take effect are beyond the scope of this rulemaking and unnecessary. Joint DSPs argued that with respect to the scope of this rulemaking, the published proposal makes clear that the commission can only address notice and implementation of TCRF updates; other rates or charges are not within the scope of this rulemaking, and to go beyond TCRF updates would violate due process requirements.

#### *Commission Response*

The commission concludes that the adopted rule's provision for 45 days between the commission's approval of a new TCRF rate and a DSP's implementation of that rate provides appropriate pricing certainty for REPs. Because the modified proposal adopted by the commission does not allow the temporary implementation of TCRF rates that are not commission-approved, parties' concerns in this regard are moot.

#### *Other comments on specific sections of the rule:*

##### *§25.193(b)(2): Reconciliation*

OPUC commented that the language in subsection (b)(2) is unclear and offered clarifying language. TIEC commented that while it opposes the addition of this subsection, if the commission proceeds with this concept, the proposed changes are unnecessarily complicated and confusing. TIEC offered alternative language, which CORE supported, that includes a provision for refunding TCRF over-recoveries, but which does not contain a provision that allows utilities to surcharge ratepayers for under-recoveries as contemplated in the published proposal. TIEC stated that there is no surcharge provision in existing §25.193, and one should not be adopted here. TIEC commented that PURA allows DSPs to adjust their rates to ensure "timely" recovery of wholesale transmission costs--not exact cost recovery--and DSPs should not be authorized to surcharge under-recoveries to ratepayers. TIEC stated that the commission should, however, require over-recoveries to be returned to retail customers with interest, and that such a mechanism will ensure that DSPs do not over-recover their wholesale transmission costs through the TCRF and recognize the reduction in regulatory lag that will result from allowing DSPs to carry forward a balance. TIEC opined that the interest rate for over-recoveries should be the DSP's weighted average cost of capital (WACC), which rep-

resents the costs the DSP would have incurred to obtain capital from a source other than its ratepayers.

Joint DSPs stated that the purpose of the published proposal is to ensure that a DSP collects all, but no more than, the transmission costs paid to TSPs that are not included in the DSP's base rates (with interest on any under or over-recoveries), and that disallowing surcharges will defeat the purpose of the published proposal. In response to TIEC's comments regarding the use of the utility's WACC for interest on over-recoveries, Joint DSPs submitted that the interest rate should reflect economic conditions during the under- or over-recovery period, with the appropriate interest rate being the commission-prescribed rate of interest applicable to overcharges, which is modified annually and thus reflects current market interest rates during the period of over-recovery.

TIEC additionally stated that it is not clear from the published proposal that DSPs would have to adjust their rates at the next opportunity for an interim TCRF update to correct for over-recoveries. Cities, CORE, and OPUC echoed this viewpoint, stating that under the current rule and published proposal, a DSP is not required to make a TCRF filing. Cities, CORE, OPUC, and TIEC stated that the current rule and published proposal could be read to leave open the possibility that DSPs would continue in a state of over-recovery until they decided to submit an interim TCRF filing, which could be delayed for some time. Cities, CORE, OPUC, and TIEC stated that although the published proposal references true-up costs and revenues over a six-month period, it is not clear that this provision actually requires DSPs to update or true-up their TCRFs every six months; rather, this provision could be interpreted to mean that only the last six months prior to the TCRF would be true-up in the subsequent TCRF update, or that DSPs that fail to file for another TCRF update after six months are relieved of the obligation to true-up costs and revenues for that period. CORE commented that the referenced six-month true-up period would not allow a DSP to capture all of its over- or under-recoveries in a single TCRF update, and that these potential issues and interpretations of the published proposal create significant cost exposure for customers. To correct these problems, TIEC recommended language to clarify that DSPs must file for an interim TCRF update at the next available opportunity if they begin to over-recover their transmission costs; Cities and CORE stated that the rule should require any over-recoveries be returned to customers within six months of occurrence. CORE stated that the published proposal clearly requires the DSP to file a true-up in its next possible TCRF update to prevent over-recoveries that occur beyond the six-month true-up period from not being refunded, and that surcharges for under-recovered amounts should not be permitted. CORE further recommended that if surcharges are permitted, interest should not be applied.

Joint DSPs acknowledged that a DSP could be in a position of over-recovery if it were not required to file a TCRF update every six months, but also noted the possibility that a DSP could be in a position of under-recovery. Contrary, however, to the resolution to this problem suggested by some commenters--that DSPs be required to file a TCRF update at every semi-annual opportunity--Joint DSPs expressed their belief that the better approach is to simply remove the references to "six months" in the portion of subsection (b)(2) that deals with the prior period to be true-up, and have the rule include a provision that would cover a period beginning with the first day after the most recent true-up. This approach would ensure that, once the true-up provision takes effect, no periods will escape being true-up, but will also allow

a DSP to skip a TCRF update if the DSP determines that an update is unwarranted.

#### *Commission Response*

The commission agrees with Joint DSPs that disallowing recovery of under-recovered TCRF amounts is contrary to the purpose of the published proposal. The commission concludes that the modified proposal as reflected in the adopted rule appropriately allows a DSP to recover--but not over-recover--the passed-through transmission costs that the DSP is charged by TSPs.

The commission agrees with parties' comments that requiring DSPs to file TCRF updates every six months eliminates uncertainty and helps avoid overly complex filings. The commission's adopted rule therefore provides that DSPs "shall" rather than "may" file their TCRF updates every six months.

Because the modified proposal adopted by the commission does not allow a DSP to recover carrying costs on unrecovered TCRF amounts, avoids the need for complicated true-ups of temporarily over-recovered amounts by not allowing the implementation of TCRF rates that have not been approved by the commission, and requires DSPs to update their TCRFs every six months, parties' concerns regarding these issues are moot.

#### *Workshop Conducted on July 29, 2010--Oral Comments*

At the workshop, oral comments in response to staff's opening discussion of the modified proposal were generally minimal. CenterPoint Energy Houston Electric, Oncor Electric Delivery Company, AEP Texas Central Company, and AEP Texas North Company expressed support for the modified proposal. The Alliance for Retail Markets and TXU Energy Retail likewise expressed support. CORE stated that while it was not yet able to state whether it supported the modified proposal, it appreciated the changes that had been made and the work that had been done towards making the proposal more palatable.

#### *Post-Workshop Filed Comments*

In written comments filed after the workshop, CenterPoint Energy Houston Electric, Oncor Electric Delivery Company, Texas-New Mexico Power Company, AEP Texas Central Company, and AEP Texas North Company affirmed their support for the modified proposal. The Alliance for Retail Markets (specifically, Direct Energy LP, First Choice Power LP, and Green Mountain Energy Company) also commented that they support the proposal, as did CPL Retail LP, Reliant Energy Retail Services LLC, TXU Energy Retail Company LLC, and WTU Retail LP.

COH, CORE, Cities, TIEC, and OPUC stated that they do not support the modified proposal. COH and Cities continued to maintain that the amendment is unnecessary and does not balance the interests of the electricity consumer and DSPs. COH additionally asserted that the modified proposal would create a piecemeal and perpetual true-up mechanism. CORE stated that the modified proposal includes changes to the TCRF formula that were not included in the published proposal or recommended by parties in comments, and opined that the amendment should be re-noticed and re-published. CORE additionally commented that the modified proposal would result in transmission revenues being true-up along with transmission costs; CORE contended that this is not authorized by PURA §35.004(d), which pertains only to transmission investment. CORE stated that, consequently, the modified proposal remains contrary to PURA but for different reasons than the published proposal. TIEC and OPUC held that the modified proposal would far surpass the legislative intent to provide "timely" recov-

ery of transmission costs. COH, Cities, TIEC, and OPUC stated that the modified proposal does not take into account the impact of load growth on a DSP's base-rate revenues, and TIEC and OPUC jointly recommended a revision, which was supported by Cities, to the modified proposal's TCRF formula that would take into account not only a DSP's TCRF costs and revenues, but also a DSP's revenues and expenses related to transmission costs recovered through base rates.

#### *Commission Response*

The commission concludes that adoption of the modified proposal is reasonable because it enables DSPs to recover passed-through transmission service costs over which the DSPs have no control and for which they do not provide the underlying service. For this type of cost passed on to a DSP, the traditional concept that regulatory lag serves as a means of incentivizing greater efficiency does not hold, because the DSP has no means of controlling or managing the cost. The role of the DSP as a conduit for the billing and collection of transmission charges evolved during the early stages of implementing retail competition, when it was determined that TSPs could bill and collect transmission costs from a small number of DSPs more efficiently than they could from a significantly larger universe of REPs. The commission addressed this point in Docket Number 22344 (Generic Issues Associated with Applications for Approval of Unbundled Cost of Service Rate Pursuant to PURA §39.201 and Public Utility Commission Rule §25.344), where it stated in Order No. 14 that:

The Commission concludes that the ERCOT TSPs should bill transmission and distribution utilities, which would then bill REPs a combined transmission and distribution charge. The direct-billing method, in which TSPs bill REPs directly for transmission service would introduce a billing relationship that does not exist today. It would also result in REPs paying each month over 30 TSPs for transmission service and the local distribution utility for distribution service.

One consequence of this market structure, however, is that DSPs have had to bear and absorb a certain portion of the passed-through transmission costs for which they are not responsible. The modified proposal addresses this situation and makes the DSPs whole with respect to incremental TCRF costs.

The commission disagrees with CORE that the modified proposal needs to be re-noticed and re-published. The modified proposal was developed in response to parties' specific comments and does not change the type of costs being recovered nor does it impact new entities. Regarding CORE's characterization of PURA §35.004(d), the commission notes that recovery of transmission investment necessarily requires the receipt of revenues by a DSP, and the modified proposal simply ensures that a DSP's incremental TCRF revenues are sufficient to cover the incremental TCRF costs. This result is consistent with the legislative intent to provide timely recovery of transmission investment.

For reasons previously stated, the commission rejects the proposals by COH, Cities, TIEC, and OPUC to take into account a DSP's load growth and the amount of transmission costs and revenues related to the DSP's base rates.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this amendment, the commission makes modifications for the purpose of clarifying its intent.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2010) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §35.004(d), which allows the commission to approve wholesale rates that may be periodically adjusted to ensure timely recovery of transmission investment; §35.006(a), which requires that the commission adopt rules relating to wholesale transmission service, rates and access; and §36.001(a), which allows the commission to establish and regulate rates of an electric utility.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 35.004(d), 35.006(a), and 36.001(a).

§25.193. *Distribution Service Provider Transmission Cost Recovery Factor (TCRF).*

(a) Application. The provisions of this section apply to all investor-owned distribution service providers (DSPs) providing distribution service within the Electric Reliability Council of Texas (ERCOT) region to retail electric providers and other customers of the distribution system.

(b) TCRF authorized.

(1) A DSP subject to this section that is billed for transmission service by a transmission service provider (TSP) pursuant to §25.192 of this title (relating to Transmission Service Rates) shall be allowed to include within its tariff a TCRF clause that authorizes the DSP to charge or credit its customers for the amount of wholesale transmission cost changes approved or allowed by the commission to the extent that such costs vary from the transmission service cost utilized to fix the base rates of the DSP. The DSP shall update its TCRF twice per year on March 1 and September 1 to pass through the wholesale transmission cost changes billed by a TSP. For the March 1 update, the DSP shall file a request to update its TCRF no later than December 1; and for the September 1 update, no later than June 1. Within 45 days after a DSP files a request to update its TCRF, the commission shall issue an order establishing the amount of the revised TCRF and suspend the effective date of the revised TCRF as necessary so that the new TCRF charges will take effect on March 1 or September 1, as applicable.

(2) A DSP shall include in its TCRF update calculation:

(A) the cost of wholesale transmission cost changes approved or allowed by the commission to the extent that such costs vary from the transmission service cost utilized to fix the rates of the DSP; and

(B) an adjustment amount, which shall equal:

(i) the actual costs paid by the DSP during the review period to TSPs as a result of increases in the TSPs' wholesale transmission rates above the wholesale transmission rates of the TSPs used to develop the retail transmission charges of the DSP in the DSP's last rate case; minus

(ii) the revenues recovered through the DSP's TCRF minus the portion of the adjustments approved by the commission in the DSP's most recent two TCRF filings that were in effect during the review period.

(iii) For a March 1 TCRF update, the adjustment shall reflect the six-month period beginning with the preceding May

1 and continuing through October 31 (review period); for a September 1 update, the adjustment shall reflect the six-month period beginning with the preceding November 1 and continuing through April 30 (review period). In no event shall a DSP's TCRF clause result in the DSP recovering more than its actual cost of wholesale transmission service included in the TCRF.

(c) TCRF Formula. The TCRF for each class shall be computed pursuant to the following formula:  
Figure: 16 TAC §25.193(c)

(d) TCRF charges. A DSP's TCRF charge shall remain in effect until adjusted under this section or until the DSP's delivery rates change pursuant to a commission order in a rate proceeding.

(e) Reports. The DSP shall maintain and provide to the commission semi-annual reports containing all information required to monitor the costs recovered through the TCRF clause. This information includes, but is not limited to, the total estimated TCRF cost for each month, the actual TCRF cost on a cumulative basis, the amount of transmission costs included in base rates, total revenues resulting from the TCRF, and the calculation of the amount to be recovered under subsection (b)(2) of this section. The reports shall be filed by March 31 and September 30 of each year.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 5, 2010.

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Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

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For further information, please call: (512) 936-7223



## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 97. PLANNING AND ACCOUNTABILITY

##### SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

###### 19 TAC §97.1004

The Texas Education Agency adopts an amendment to §97.1004, concerning adequate yearly progress (AYP). The amendment is adopted without changes to the proposed text as published in the August 27, 2010, issue of the *Texas Register* (35 TexReg 7644) and will not be republished. The section establishes provisions related to AYP and sets forth the process for evaluating campus and district AYP status. The section also adopts the most recently published AYP guide. The amendment adopts applicable excerpts, *Sections II-V*, of the *2010 Adequate Yearly Progress Guide*. Earlier versions of the guide will remain in effect with respect to the school years for which they were developed.

Under the accountability provisions in the federal No Child Left Behind Act, all public school campuses, school districts, and

the state are evaluated for AYP. Districts, campuses, and the state are required to meet AYP criteria on three measures: reading/English language arts, mathematics, and either graduation rate (for high schools and districts) or attendance rate (for elementary and middle/junior high schools). If a campus, district, or state receiving Title I, Part A, funds fails to meet AYP for two consecutive years, that campus, district, or state is subject to certain requirements such as offering supplemental educational services, offering school choice, or taking corrective actions. To implement these requirements, the agency developed the AYP guide.

Agency legal counsel has determined that the commissioner of education should take formal rulemaking action to place into the *Texas Administrative Code* procedures related to AYP. Through 19 TAC §97.1004, adopted effective July 14, 2005, the commissioner exercised rulemaking authority to establish provisions related to AYP and set forth the process for evaluating campus and district AYP status. Portions of each AYP guide have been adopted beginning with the 2004 AYP Guide, and the intent is to annually update 19 TAC §97.1004 to refer to the most recently published AYP guide.

The amendment to 19 TAC §97.1004 updates the rule to adopt applicable excerpts, *Sections II-V*, of the *2010 Adequate Yearly Progress Guide*. These excerpted sections describe specific features of the system, AYP measures and standards, and appeals. In 2010, the U.S. Department of Education (USDE) approved changes to specific components of the AYP system, including the areas addressed in the applicable excerpts of the 2010 AYP Guide. Examples of approved changes include federally required development of a statewide four-year longitudinal graduation rate goal and annual targets of improvement, including the alternative use of a five-year longitudinal graduation rate for AYP calculations; implementation of the Texas Projection Measure (TPM) for TAKS-Modified (TAKS-M) assessments in Grades 4, 7, and 10; implementation of the TAKS Alternate (TAKS-Alt) growth measure for all subjects and all grades; revised business rules for the assignment of students to the limited English proficient (LEP) student group for graduation rate calculations; and the use of uniform averaging of data across years for districts and campuses with small numbers of tested students. Other minor modifications include the removal of hurricane provisions related to the Hurricane Ike Flexibility waiver and removal of the USDE H1N1 provision.

In addition, subsection (d) has been modified to specify that the AYP guide adopted for the school years prior to 2010-2011 will remain in effect with respect to those school years.

The adopted amendment establishes in rule the specific AYP procedures for 2010. Applicable procedures are to be adopted each year as annual versions of the AYP guide are published. The adopted amendment has no locally maintained paperwork requirements.

The TEA determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal began August 27, 2010, and ended September 27, 2010. No public comments were received.

The amendment is adopted under the Texas Education Code (TEC), §7.055(b)(32), which authorizes the commissioner to perform duties in connection with the public school accountabil-

ity system as prescribed by TEC, Chapter 39; TEC, §39.073, as this section existed before amendment by House Bill 3, 81st Texas Legislature, 2009, which authorizes the commissioner to determine how all indicators adopted under TEC, §39.051(b), may be used to determine accountability ratings; and TEC, §39.075(a)(4), as this section existed before amendment by House Bill 3, 81st Texas Legislature, 2009, which authorizes the commissioner to conduct special accreditation investigations in response to state and federal program requirements.

The amendment implements the TEC, §§7.055(b)(32), 39.073, and 39.075(a)(4).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

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For further information, please call: (512) 475-1497



## PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

### CHAPTER 227. PROVISIONS FOR EDUCATOR PREPARATION CANDIDATES

#### SUBCHAPTER B. PRELIMINARY EVALUATION OF CERTIFICATION ELIGIBILITY

##### **19 TAC §§227.101, 227.103, 227.105, 227.107**

The State Board for Educator Certification (SBEC) adopts new §§227.101, 227.103, 227.105, and 227.107, relating to preliminary evaluation of certification eligibility. The new sections are adopted without changes to the proposed text as published in the July 9, 2010, issue of the *Texas Register* (35 TexReg 6001) and will not be republished. The adopted new sections provide for the implementation of a preliminary criminal history evaluation.

An Attorney General opinion was requested by the commissioner of education regarding several issues related to the preliminary criminal history evaluation required by House Bill (HB) 963, 81st Texas Legislature, 2009, as codified in the Texas Occupations Code, Chapter 53, Subchapter D. Subsequently, the Attorney General Opinion No. GA-0759, issued February 16, 2010, held that the statute grants the SBEC the implied authority to require any information deemed necessary to determine whether a conviction or deferred adjudication set out in a request for preliminary criminal history evaluation renders the requestor ineligible for certification by the SBEC. The opinion further stated that while the evaluation is binding with regard to information that is "reasonably available" to the SBEC, what

information is considered to be "reasonably available" is largely a question of fact that must be determined by the SBEC.

New 19 TAC Chapter 227, Provisions for Educator Preparation Candidates, Subchapter B, Preliminary Evaluation of Certification Eligibility, establishes the procedures for administering and responding to requests for preliminary criminal history evaluation of certification eligibility and limits the effect of the criminal history evaluation to the information that is provided by the requestor. The new sections reflect input received at the April 29, 2010, stakeholder meeting. Specifically, the new subchapter includes the following.

New 19 TAC §227.101, Purpose, identifies the purpose of the subchapter in subsection (a). The terms, "criminal history," "ineligibility," "reasonably available," "requestor," and "Texas Education Agency (TEA) staff," are defined in subsection (b) for purposes of this subchapter. Subsection (c) identifies persons who are eligible to make a request for preliminary criminal history evaluation under new 19 TAC Chapter 227, Subchapter B.

New 19 TAC §227.103, Application, establishes the procedures that a person must follow to submit a request for preliminary criminal history evaluation. New subsection (a) specifies that the fee for a request for preliminary criminal history evaluation must be paid before the request is submitted. New subsection (b) identifies the required contents of a request for preliminary criminal history evaluation. New subsection (c) specifies that all required documents and information must be included with the request for preliminary criminal history evaluation or the request will not be considered reasonably available. New subsection (d) identifies the recommended disposition documentation for a conviction or deferred adjudication. New subsection (e) specifies the permissible methods of transmittal of the application and required documentation to be provided to the TEA staff. New subsection (f) identifies what constitutes a complete request for preliminary criminal history evaluation and provides that no action will be taken on requests that are incomplete. New subsection (g) provides that documents submitted in connection with a request for preliminary criminal history evaluation will not be returned and may be destroyed or retained in accordance with the TEA records retention schedule.

New 19 TAC §227.105, Preliminary Criminal History Evaluation Letter, establishes the procedures and timeline for the issuance of a preliminary criminal history evaluation letter. New subsection (a) provides that within 90 days of receipt of a complete request for preliminary criminal history evaluation, the TEA staff will notify the requestor by e-mail of the TEA's determination with regard to the requestor's potential ineligibility based on the matters described in the request. New subsection (b) provides that the preliminary criminal history evaluation letter is strictly limited to the facts stated on the request for preliminary criminal history evaluation, and that the requestor is still subject to a full fingerprint-based criminal history evaluation at the time the requestor applies for certification. New subsection (c) provides that a favorable preliminary criminal history evaluation letter is not a guarantee of educator certification, admission to an educator preparation program, or employment as an educator.

New 19 TAC §227.107, Fee for Request for Preliminary Criminal History Evaluation, specifies in new subsection (a) that the fee for a request for preliminary criminal history evaluation is established in 19 TAC §230.436, Schedule of Fees for Certification Services. New subsection (b) provides that a new fee is required to reactivate a request if the requestor fails to submit the required



documentation within 90 days of receipt by the TEA of the initial fee.

In response to HB 963, an amendment to §230.436, Schedule of Fees for Certification Services, was adopted and can be found in the Adopted Rules section of this issue. The adopted amendment adds a nonrefundable request for preliminary criminal history evaluation fee.

Persons enrolled or planning to enroll in a Texas educator preparation program or planning to take a certification examination must follow the procedures established in new 19 TAC Chapter 227, Subchapter B, to submit a request for preliminary criminal history evaluation, which includes a form to be used when an individual makes a request for a preliminary criminal history evaluation. The adopted new sections have no locally maintained paperwork requirements to school districts and educators.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Following the June 2010 SBEC meeting, proposed new §§227.101, 227.103, 227.105, and 227.107 were filed with the *Texas Register* initiating the official public comment period. No comments were received regarding the proposed new sections.

The State Board of Education (SBOE) took no action on the review of new §§227.101, 227.103, 227.105, and 227.107 at the September 24, 2010, SBOE meeting.

The new sections are adopted under the Texas Education Code (TEC), §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; and the Texas Occupations Code, §53.105, which specifies that a licensing authority may charge a person requesting an evaluation under the Texas Occupations Code, Chapter 53, Subchapter D, a fee adopted by the authority. Fees adopted by a licensing authority under the Texas Occupations Code, Chapter 53, Subchapter D, must be in an amount sufficient to cover the cost of administering this subchapter.

The adopted new sections implement the TEC, §21.041(b)(1) and (4), and Texas Occupations Code, §53.105.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Jerel Booker

Associate Commissioner, Educator and Student Policy Initiatives,  
Texas Education Agency

State Board for Educator Certification

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For further information, please call: (512) 475-1497



## CHAPTER 230. PROFESSIONAL EDUCATOR PREPARATION AND CERTIFICATION SUBCHAPTER N. CERTIFICATE ISSUANCE PROCEDURES

### 19 TAC §230.436

The State Board for Educator Certification (SBEC) adopts an amendment to §230.436, concerning fees for certification services. The amendment is adopted without changes to the proposed text as published in the July 9, 2010, issue of the *Texas Register* (35 TexReg 6004) and will not be republished. The section provides for fees for certification services. The adopted amendment establishes a nonrefundable fee for a request for preliminary criminal history evaluation as authorized by House Bill (HB) 963, 81st Texas Legislature, 2009.

The adopted amendment to 19 TAC §230.436 provides for a request for preliminary criminal history evaluation fee of \$150, which, pursuant to the Texas Occupations Code, §53.105, Texas Education Agency staff have determined is sufficient to cover the cost of administration. The adopted amendment also establishes this fee as nonrefundable. It should be noted that an additional fee applies to the request for preliminary criminal history evaluation fee for the purpose of recovering the cost of the Texas Online Initiative as required by 19 TAC §230.438, E-Pay Supplemental Fee.

The adopted amendment has no procedural and reporting implications. The adopted amendment has no locally maintained paperwork requirements to school districts and educators.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Following the June 2010 SBEC meeting, the proposed amendment to §230.436 was filed with the *Texas Register* initiating the official public comment period. No comments were received regarding the proposed amendment.

The State Board of Education (SBOE) took no action on the review of the amendment to §230.436 at the September 24, 2010, SBOE meeting.

The amendment is adopted under the Texas Occupations Code, §53.105, which specifies that a licensing authority may charge a person requesting an evaluation under the Texas Occupations Code, Chapter 53, Subchapter D, a fee adopted by the authority. Fees adopted by a licensing authority under the Texas Occupations Code, Chapter 53, Subchapter D, must be in an amount sufficient to cover the cost of administering this subchapter.

The adopted amendment implements the Texas Occupations Code, §53.105.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Jerel Booker  
Associate Commissioner, Educator and Student Policy Initiatives,  
Texas Education Agency  
State Board for Educator Certification  
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For further information, please call: (512) 475-1497



## CHAPTER 230. PROFESSIONAL EDUCATOR PREPARATION AND CERTIFICATION

The State Board for Educator Certification (SBEC) adopts amendments to §230.437 and §230.483, concerning provisions for professional educator preparation and certification. The amendments are adopted without changes to the proposed text as published in the July 9, 2010, issue of the *Texas Register* (35 TexReg 6005) and will not be republished. The sections address the issuance of additional certificates based on examination and specific requirements for standard career and technical education certificates based on experience and preparation.

The adopted amendments allow the Marketing Education: Grades 8-12 certificate to be obtained through certification by examination and allows either a school district or an educator preparation program to review and approve the required two years of work experience.

The commissioner of education received a complaint from an educator who was currently certified in several other fields and was seeking to become certified in Marketing Education: Grades 8-12, a Career and Technical Education certification, which, pursuant to 19 TAC §233.14, Career and Technical Education (Certificates requiring experience and preparation in a skill area), required two years of wage-earning experience approved by the educator preparation program in one or more marketing occupations. This certification also required passing a content area certification examination. However, 19 TAC §230.437(2), specifically excluded career and technical education certification based on skill and experience from the provisions allowing certification by examination for most other certification fields.

In addition, 19 TAC §230.483 required a one-year internship and recommendation by an educator preparation program for the other career and technical education certifications based on skill and experience (Health Science Technology: Grades 8-12 and Trade and Industrial: Grades 8-12) because those areas involved student safety issues unique to the areas. The same concerns did not apply to Marketing Education.

Staff consulted with the Texas Education Agency Curriculum Division, which concurred that there was no need for a separate Marketing Education internship and no reason why an educator who was already certified and whose work experience had been approved should not have been able to qualify for certification by examination in Marketing Education: Grades 8-12.

The adopted amendments to 19 TAC §230.437 and §230.483 update the rules to add an exception for the issuance of certificates based on examination and address the verification of work experience. Following is a description of the adopted changes.

The adopted amendment to 19 TAC §230.437(2) adds language to allow an exception for Marketing Education: Grades 8-12 even though it is a career and technical education certificate

based on skill and experience. The exception allows for certification by examination.

The adopted amendment to 19 TAC §230.483(c)(1) provides that, in the case of an educator otherwise qualified for certification by examination in Marketing Education: Grades 8-12, the review and approval of work experience can be performed by a certified school administrator.

The adopted amendments have no procedural and reporting implications to school districts and educators. Also, the adopted amendments have no locally maintained paperwork requirements to school districts and educators.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Following the June 2010 SBEC meeting, the proposed amendments to 19 TAC §230.437 and §230.483 were filed with the *Texas Register* initiating the official public comment period. No comments were received regarding the proposed amendments.

The State Board of Education (SBOE) took no action on the review of the amendments to 19 TAC §230.437 and §230.483 at the September 24, 2010, SBOE meeting.

## SUBCHAPTER N. CERTIFICATE ISSUANCE PROCEDURES

### 19 TAC §230.437

The amendment is adopted under the Texas Education Code (TEC), §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(5), which requires the SBEC to propose rules that provide for the issuance of an educator certificate to a person who holds a similar certificate issued by another state or foreign country, subject to the TEC, §21.052; §21.041(b)(9), which requires the SBEC to propose rules that provide for continuing education requirements; §21.041(c), which requires the SBEC to propose a rule adopting a fee for the issuance and maintenance of an educator certificate that, when combined with any fees imposed under subsection (d), is adequate to cover the cost of administration of the TEC, Chapter 21, Subchapter B; and §21.048(a), which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC.

The adopted amendment implements the TEC, §§21.031(a), 21.041(b)(1)-(5) and (9) and (c), and 21.048(a).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Jerel Booker

Associate Commissioner, Educator and Student Policy Initiatives,  
Texas Education Agency

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For further information, please call: (512) 475-1497



## SUBCHAPTER P. REQUIREMENTS FOR STANDARD CERTIFICATES AND SPECIALIZED ASSIGNMENTS OR PROGRAMS

### 19 TAC §230.483

The amendment is adopted under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid.

The adopted amendment implements the TEC, §21.031(a) and §21.041(b)(1)-(3).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Jerel Booker

Associate Commissioner, Educator and Student Policy Initiatives,  
Texas Education Agency

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## CHAPTER 233. CATEGORIES OF CLASSROOM TEACHING CERTIFICATES

### 19 TAC §§233.1 - 233.4, 233.12, 233.15

The State Board for Educator Certification (SBEC) adopts amendments to §§233.1-233.4, 233.12, and 233.15, concerning provisions for categories of classroom teaching certificates. The amendments to §233.1 and §233.4 are adopted with technical changes to the proposed text as published in the July 9, 2010, issue of the *Texas Register* (35 TexReg 6007). The amendments to §§233.2, 233.3, 233.12, and 233.15 are adopted without changes to the proposed text as published in the July 9, 2010, issue and will not be republished. The sections provide

for the general authority for 19 TAC Chapter 233, Categories of Classroom Teaching Certificates, and establish teaching assignment certificates for Generalist; English Language Arts and Reading and Social Studies, including Speech; Mathematics and Science; Career and Technical Education (Certificates not requiring experience and preparation in a skill area); and Languages Other Than English (LOTE).

The adopted amendments update the rules to clarify that assignment criteria are specified in 19 TAC §231.1, Criteria for Assignment of Public School Personnel, and remove expired provisions. The adopted amendments also add a new certificate for Speech: Grades 7-12, to be issued no earlier than November 1, 2010; and expand the certificates issued for LOTE by adding four new certificates for Hindi, Italian, Turkish, and Urdu in Early Childhood-Grade 12, to be issued no earlier than November 1, 2010.

The Texas Education Code (TEC), §21.041(b)(1), authorizes the SBEC to propose rules that provide for the regulation of educators. In order to update the standards and provide new grade level certifications, the following changes are adopted.

In 19 TAC §233.1, language was added to specify in adopted subsection (h) that provisions for assignments of holders of the certificates in 19 TAC Chapter 233, Categories of Classroom Teaching Certificates, are codified in 19 TAC §231.1, Criteria for Assignment of Public School Personnel. In response to a request for clarification by the SBEC, language was amended in §233.1(h) to clarify that the general assignment descriptions in 19 TAC Chapter 233 are subject to the specific assignment provisions of 19 TAC §231.1, and that in the event of conflict, §231.1 shall prevail.

Language was amended in 19 TAC §233.2 to remove a provision relating to teaching in self-contained classrooms in Grades 5 and 6 that expired August 1, 2010.

Language was amended in 19 TAC §233.3 to add a new certificate to allow Speech to be taught in Grade 7 in adopted new subsection (h). The new Speech: Grades 7-12 certificate will be issued no earlier than November 1, 2010, and current subsection (j) was renumbered accordingly.

Language was amended in 19 TAC §233.4 and §233.12 to include technical changes impacted by courses that are no longer offered due to 19 TAC §231.1, regarding career and technical education and science assignments. In response to a request for clarification by the SBEC, language regarding the Integrated Physics and Chemistry course was maintained in §233.4(i) since it was not intended to be excluded from the assignments for the Mathematics/Physical Science/Engineering: Grades 8-12 certificate.

The adopted amendment to 19 TAC §233.15 creates new subsections (f), (g), (l), and (m) to add new certificates for LOTE in Hindi: Early Childhood-Grade 12; Italian: Early Childhood-Grade 12; Turkish: Early Childhood-Grade 12; and Urdu: Early Childhood-Grade 12. The new certificates will allow the holder to teach in a prekindergarten program, in kindergarten, and in Grades 1-12. The new certificates will be issued no earlier than November 1, 2010. The current subsections were renumbered accordingly.

The adopted amendments have no procedural and reporting implications to school districts and educators. Also, the adopted amendments have no locally maintained paperwork requirements to school districts and educators.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Following the June 2010 SBEC meeting, the proposed amendments to 19 TAC §§233.1-233.4, 233.12, and 233.15 were filed with the *Texas Register* initiating the official public comment period. No comments were received regarding the proposed amendments.

The State Board of Education (SBOE) took no action on the review of the amendments to 19 TAC §§233.1-233.4, 233.12, and 233.15 at the September 24, 2010, SBOE meeting.

The amendments are adopted under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate.

The adopted amendments implement the TEC, §§21.003(a), 21.031(a), and 21.041(b)(1) and (4).

#### §233.1. General Authority.

(a) In this chapter, the State Board for Educator Certification (SBEC) establishes separate certificate categories within the certificate class for the classroom teacher established under §232.2(b)(3) of this title (relating to Classes of Certificates).

(b) For purposes of authorizing a person to be employed by a school district under the Texas Education Code, §21.003(a), a certificate category identifies:

- (1) the content area or the special student population the holder may teach;
- (2) the grade levels the holder may teach; and
- (3) the earliest date the certificate may be issued.

(c) Unless provided otherwise in this title, the content area and grade level of a certificate category as well as the standards underlying the certification examination for each category are aligned with the Texas Essential Knowledge and Skills curriculum adopted by the State Board of Education.

(d) A category includes both a standard certificate and the related emergency or temporary credential. A category may comprise a standard base certificate or a supplemental certificate. A supplemental certificate may be issued only to a person who already holds the appropriate standard base certificate.

(e) A person must satisfy all applicable requirements and conditions under this title and other law to be issued a certificate in a category. A person seeking an initial certification must pass the appropriate grade level of pedagogy and professional responsibility certification examination and the appropriate content subject examination(s) for the certification sought as established by the SBEC. A person completing

requirements for a standard certificate using a score on an examination that has been eliminated must apply for certification not later than one year following the examination date upon which the person passed the examination. Exceptions may be granted for a period of two years after the elimination of the examination for catastrophic illness of the educator or an immediate family member or military service of the applicant.

(f) A person seeking a languages other than English certificate valid for Early Childhood-Grade 12 specified in §233.15 of this title (relating to Languages Other Than English) must successfully complete an approved oral or communication proficiency examination in the target language in addition to the appropriate grade level of pedagogy and professional responsibility and content subject examinations as specified in subsection (e) of this section.

(g) A holder of a certificate valid for Grades 4-8 may teach technology applications in Grades 4-8 if integrated within an academic course or through interdisciplinary methodology in those subjects that the individual is certified to teach. The school district is responsible for ensuring that the educator has the appropriate technology applications knowledge and skills to teach the course(s) to which he or she is assigned. If Technology Applications is taught as a separate course, the educator shall be required to hold an appropriate technology applications certificate as specified in §233.5 of this title (relating to Technology Applications and Computer Science).

(h) The general assignment descriptions in this chapter are subject to the specific provisions for the assignment of a holder of a certificate in §231.1 of this title (relating to Criteria for Assignment of Public School Personnel), and in the event of any conflict with this chapter, §231.1 of this title shall prevail.

#### §233.4. Mathematics; Science.

(a) Mathematics: Grades 4-8. The Mathematics: Grades 4-8 certificate may be issued no earlier than September 1, 2002. The holder of the Mathematics: Grades 4-8 certificate may teach mathematics in Grades 4-8, including Algebra I for high school credit.

(b) Science: Grades 4-8. The Science: Grades 4-8 certificate may be issued no earlier than September 1, 2002. The holder of the Science: Grades 4-8 certificate may teach science in Grades 4-8.

(c) Mathematics/Science: Grades 4-8. The Mathematics/Science: Grades 4-8 certificate may be issued no earlier than September 1, 2002. The holder of the Mathematics/Science: Grades 4-8 certificate may teach mathematics and science in Grades 4-8.

(d) Mathematics: Grades 8-12. The Mathematics: Grades 8-12 certificate may be issued no earlier than September 1, 2002. The holder of the Mathematics: Grades 8-12 certificate may teach mathematics in Grade 8 and all mathematics courses in Grades 9-12.

(e) Science: Grades 8-12. The Science: Grades 8-12 certificate may be issued no earlier than September 1, 2002. The holder of the Science: Grades 8-12 certificate may teach science in Grade 8 and all science courses in Grades 9-12.

(f) Life Science: Grades 8-12. The Life Science: Grades 8-12 certificate may be issued no earlier than September 1, 2002. The holder of the Life Science: Grades 8-12 certificate may teach science in Grade 8 and all biology, environmental systems, environmental science, and aquatic science courses in Grades 9-12.

(g) Physical Science: Grades 8-12. The Physical Science: Grades 8-12 certificate may be issued no earlier than September 1, 2002. The holder of the Physical Science: Grades 8-12 certificate is eligible to teach science in Grade 8 and all physics and chemistry courses, including Integrated Physics and Chemistry, in Grades 9-12.

(h) Physics/Mathematics: Grades 8-12. The Physics/Mathematics: Grades 8-12 certificate may be issued no earlier than September 1, 2004. The holder of the Physics/Mathematics: Grades 8-12 certificate is eligible to teach mathematics in Grade 8 and all mathematics courses in Grades 9-12. The holder may also teach science in Grade 8 and all physics courses in Grades 9-12.

(i) Mathematics/Physical Science/Engineering: Grades 8-12. The Mathematics/Physical Science/Engineering: Grades 8-12 certificate may be issued no earlier than September 1, 2005. The holder of the Mathematics/Physical Science/Engineering: Grades 8-12 certificate is eligible to teach mathematics in Grade 8 and all mathematics courses in Grades 9-12. The holder is also eligible to teach science in Grade 8 and all physics and chemistry courses, including Integrated Physics and Chemistry, in Grades 9-12.

(j) Chemistry: Grades 8-12. The Chemistry: Grades 8-12 certificate may be issued no earlier than September 1, 2005. The holder of the Chemistry: Grades 8-12 certificate is eligible to teach science in Grade 8 and all chemistry courses in Grades 9-12.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Jerel Booker

Associate Commissioner, Educator and Student Policy Initiatives,  
Texas Education Agency

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## 19 TAC §233.14

The State Board for Educator Certification (SBEC) adopts an amendment to §233.14, concerning provisions for the issuance of career and technical education certificates that require experience and preparation in a skill area. The amendment is adopted with a technical change to the proposed text as published in the July 9, 2010, issue of the *Texas Register* (35 TexReg 6011). The section provides for career and technical education certificates that require experience and preparation in a skill area. The adopted amendment allows either a school district or an educator preparation program to review and approve the required two years of work experience for the Marketing Education: Grades 8-12 certificate.

The commissioner of education received a complaint from an educator who was currently certified in several other fields and was seeking to become certified in Marketing Education: Grades 8-12, a Career and Technical Education certification, which, pursuant to 19 TAC §233.14, required two years of wage-earning experience approved by the educator preparation program in one or more marketing occupations. This certification also required passing a content area certification examination.

In addition, 19 TAC §230.483 required a one-year internship and recommendation by an educator preparation program for the other career and technical education certifications based on skill and experience (Health Science Technology: Grades 8-12 and Trade and Industrial: Grades 8-12) because those areas

involved student safety issues unique to the areas. The same concerns did not apply to Marketing Education.

For clarification, a technical change was made since published as proposed to the second sentence in §233.14(a). The adopted amendment to 19 TAC §233.14 provides that the review and approval of work experience can be performed by a certified school administrator in the case of an educator otherwise qualified for certification by examination in Marketing Education: Grades 8-12.

The adopted amendment has no procedural and reporting implications to school districts and educators. Also, the adopted amendment has no locally maintained paperwork requirements to school districts and educators.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Following the June 2010 SBEC meeting, the proposed amendment to 19 TAC §233.14 was filed with the *Texas Register* initiating the official public comment period. No comments were received regarding the proposed amendment.

The State Board of Education (SBOE) took no action on the review of the amendment to 19 TAC §233.14 at the September 24, 2010, SBOE meeting.

The amendment is adopted under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; §21.031, which authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; and §21.048(a), which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC.

The adopted amendment implements the TEC, §§21.003(a), 21.031, 21.041(b)(1)-(4), and 21.048(a).

*§233.14. Career and Technical Education (Certificates requiring experience and preparation in a skill area).*

(a) All individuals seeking a career and technical education certificate specified in this section must have two years of qualified work experience and preparation in a skill area approved in accordance with the provisions of §230.483(c) of this title (relating to Specific Requirements for Standard Career and Technical Education Certificates

Based on Experience and Preparation). Approval may be granted by an educator preparation program approved to prepare teachers for the career and technical education certificate sought or by a certified school administrator in the case of an educator who otherwise qualifies for certification by examination in Marketing Education: Grades 8-12.

(b) Marketing Education: Grades 8-12. The Marketing Education: Grades 8-12 certificate may be issued no earlier than September 1, 2005. The holder of the Marketing Education: Grades 8-12 certificate is eligible to teach all marketing education courses in Grades 8-12.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Jerel Booker

Associate Commissioner, Educator and Student Policy Initiatives,  
Texas Education Agency

State Board for Educator Certification

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For further information, please call: (512) 475-1497



## CHAPTER 244. CERTIFICATE OF COMPLETION OF TRAINING FOR APPRAISERS

The State Board for Educator Certification (SBEC) adopts amendments to §§244.1 - 244.3 and the repeal of §244.4, concerning provisions for the certificate of completion of training for appraisers. The amendments to §244.1 and §244.3 and the repeal of §244.4 are adopted without changes to the proposed text as published in the July 9, 2010, issue of the *Texas Register* (35 TexReg 6012) and will not be republished. The amendment to §244.2 is adopted with changes to the proposed text as published in the July 9, 2010, issue. The sections address general provisions, conditions for issuing a certificate of completion of training for appraisers of teachers, training for appraisers in districts using locally-developed teacher appraisal systems, and the certification of appraisers of administrators or counselors.

The adopted revisions to 19 TAC Chapter 244 update the rules to reflect current law regarding the certification of appraisers of educators employed in Texas public schools. The adopted amendments and repeal result from the SBEC's rule review conducted in accordance with Texas Government Code, §2001.039.

The Texas Education Code (TEC), §21.351, authorizes the commissioner of education to adopt a recommended appraisal process, the Professional Development and Appraisal System (PDAS), including required qualifications and training for appraisers. The rules in 19 TAC Chapter 150, Commissioner's Rules Concerning Educator Appraisal, state that the commissioner and the regional education service centers (ESCs) administer all aspects of the recommended appraisal process. To avoid unnecessary duplication and possible conflicting rules, the rules in 19 TAC Chapter 244 have been updated to reference appraiser qualifications and training requirements of 19 TAC Chapter 150.

The adopted revisions to 19 TAC Chapter 244 update the rules to reflect current law. Following is a description of the adopted changes.

Language in 19 TAC §244.1, General Provisions, was amended to clarify the provisions, reference applicable statutes and commissioner of education rules in 19 TAC Chapter 150 regarding educator appraisal, and remove language that repeats statute.

Section 244.2, Conditions for Issuing a Certificate of Completion of Training for Appraisers of Teachers, was amended to adopt the certification, qualifications, and required training for appraisers of educators under the recommended PDAS established by commissioner's rules in 19 TAC Chapter 150. The section title was also updated accordingly. In response to public comment received, language in §244.2(b) was further amended to specify that providers of appraiser training are responsible for verifying completion of the training, and the regional ESC designated by the commissioner of education to serve as the PDAS certification provider for the state is responsible for maintaining documentation and issuing certification to individuals who have completed PDAS appraiser training.

Section 244.3, Training for Appraisers in Districts Using Locally-Developed Teacher Appraisal Systems, was amended to clarify that the school district developed appraisal system should identify appraiser qualities and proficiencies to evaluate educators. The section title was also updated to clarify that the section applies to the training for appraisers of educators not subject to the commissioner's recommended appraisal system as well as appraisers in districts that have elected not to use the commissioner's recommended appraisal system or process.

Section 244.4, Certification of Appraisers of Administrators or Counselors, was repealed since qualifications and training required for appraisers of all educators are now provided by 19 TAC Chapter 150 and 19 TAC §244.2 and §244.3.

The adopted rule actions have no procedural and reporting implications to school districts and educators. Also, the adopted rule actions have no locally maintained paperwork requirements to school districts and educators.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Following the June 2010 SBEC meeting, the proposed amendments to 19 TAC §§244.1 - 244.3 and the repeal of §244.4 were filed with the *Texas Register* initiating the official public comment period. The following comment was received regarding the proposed revisions.

Comment: The Region 13 ESC requested that language be added clarifying its role in the appraisal training process.

Board Response: The SBEC agreed that the role of the ESC should be clarified and revised language in 19 TAC §244.2(b) to specify that PDAS training be provided in accordance with 19 TAC Chapter 150, Subchapter AA, and that the regional ESC designated by the commissioner of education to serve as the PDAS certification provider for the state is responsible for maintaining documentation and issuing certification to individuals who have completed PDAS training to appraise teachers. The SBEC, however, disagreed that Region 13 ESC, which currently handles PDAS certification, should be specified in rule, so that the rule does not require amendment if the commissioner subsequently designates another regional ESC for this purpose. Not

specifying an ESC in rule is also consistent with commissioner's rules in 19 TAC Chapter 150, Subchapter AA, §150.1001, General Provisions.

The State Board of Education (SBOE) took no action on the review of the amendments to 19 TAC §§244.1 - 244.3 and the repeal of §244.4 at the September 24, 2010, SBOE meeting.

#### **19 TAC §§244.1 - 244.3**

The amendments are adopted under the Texas Education Code (TEC), §21.041(b)(10), which requires the SBEC to propose rules that provide for certification of persons performing appraisals under the TEC, Chapter 21, Subchapter H.

The adopted amendments implement the TEC, §21.041(b)(10).

*§244.2. Training for Appraisers of Educators in School Districts Using a Recommended Appraisal Process.*

(a) The State Board for Educator Certification hereby adopts the appraiser qualifications, required appraiser training, and criteria for acceptable appraiser performance under the recommended Professional Development and Appraisal System (PDAS), as established by the commissioner of education in §150.1006 of this title (relating to Appraiser Qualifications).

(b) Training of PDAS appraisers shall be provided in accordance with the rules established by the commissioner of education in Chapter 150, Subchapter AA, of this title (relating to Teacher Appraisal). The providers of such training are responsible for verifying completion of the training, and the regional education service center designated by the commissioner to serve as the PDAS certification provider for the state is responsible for maintaining documentation and issuing certification to individuals who have completed PDAS training to appraise teachers.

(c) A school district using the commissioner-recommended administrator appraisal process shall comply with §150.1022(c) of this title (relating to Commissioner-Recommended Administrator Appraisal Process: Procedures) and §244.3 of this title (relating to Training for Appraisers of Educators in School Districts Using Locally-Developed Educator Appraisal Systems).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Jerel Booker

Associate Commissioner, Educator and Student Policy Initiatives,  
Texas Education Agency

State Board for Educator Certification

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For further information, please call: (512) 475-1497



#### **19 TAC §244.4**

The repeal is adopted under the Texas Education Code (TEC), §21.041(b)(10), which requires the State Board for Educator Certification to propose rules that provide for certification of persons performing appraisals under the TEC, Chapter 21, Subchapter H.

The adopted repeal implements the TEC, §21.041(b)(10).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Jerel Booker

Associate Commissioner, Educator and Student Policy Initiatives,  
Texas Education Agency

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## **TITLE 22. EXAMINING BOARDS**

### **PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS**

#### **CHAPTER 75. RULES OF PRACTICE**

##### **22 TAC §75.17**

The Texas Board of Chiropractic Examiners (Board) adopts an amendment to §75.17 without changes to the proposed text as published in the June 25, 2010, issue of the *Texas Register* (35 TexReg 5435). The amendment clarifies that the use of Technological Instrumented Vestibular-Ocular-Nystagmus Testing is within the scope of practice of chiropractic in Texas. This amendment describes the training required in order to perform Vestibular-Ocular-Nystagmus Testing. In response to the comments received on the original proposed amendment, the Board re-proposed this amendment with an increased requirement that, in order to administer this test, a licensee must have received a diploma in chiropractic neurology and successfully completed an additional 150-hour post-graduate specialty course in vestibular rehabilitation.

At its meeting on May 14, 2009, the Board considered a question submitted by a doctor of chiropractic as to whether Vestibular-Ocular-Nystagmus Testing was within the scope of practice of chiropractic in Texas. The Board requested additional information on the issue and considered the question again at its next Board meeting on August 13, 2009. The Board determined that the procedure was within the scope of practice but that, as required under Texas Occupations Code §201.1525, rulemaking was needed in order to describe the additional training necessary to perform the procedure. The Board considered a draft rule at its meeting on November 12, 2009, and voted to publish it for public review and comment as a proposed rule. The proposed rule was published in the January 22, 2010, issue of the *Texas Register* (35 TexReg 437). The Board received a request for a public hearing on the proposed rule from the Texas Academy of Audiology, and a hearing was held at the Board's offices in Austin on April 6, 2010. After considering the comments received on the proposed rule at its meeting on May 20, 2010, the Board withdrew the proposed rule and proposed a revised amendment. The revised proposed amendment was published in the June 25, 2010, issue of the *Texas Register* (35 TexReg 5435).

Technological Instrumented Vestibular-Ocular-Nystagmus Testing can be used as part of chiropractic treatment to analyze and

evaluate balance disorders associated with the biomechanics of the musculoskeletal system. Vestibular-Ocular-Nystagmus Testing looks for signs of neurological or vestibular problems such as dizziness, vertigo, and/or balance disorders by evaluating the presence of involuntary eye movements, nystagmus, during specific eye or body movements. Nystagmus evaluation using caloric testing can also be used in which warm or cold water or air is circulated in the ear canal to produce a temperature change that will stimulate the inner ear and promote a nystagmus response. Balance screening and testing provides information about motor control and/or balance function. The ability to maintain balance depends on the musculoskeletal system as well as vision and the vestibular system. The test is designed to measure the patient's response to the environment based on their visual and somatosensory input.

Doctors of chiropractic receive training in vestibular function as part of their training in chiropractic college. Chiropractic students average 570 hours in anatomy and 305 hours in physiology. The training of chiropractic students in vestibular function is appropriate to allow a doctor of chiropractic to employ clinical application of Technological Instrumented Vestibular-Ocular-Nystagmus Testing, caloric testing, and therapeutics. A vestibular and oculomotor functional assessment can provide a neurologically trained doctor of chiropractic with a baseline for treatment of a patient as well as the information necessary for a differential diagnosis and development of a plan for treatment. Should a test reveal a pathological disorder of the ear or other system outside of the scope of chiropractic in Texas, a doctor of chiropractic would have a duty to refer the patient to another health care provider for treatment.

The Board received comments in opposition to the revised amendment from the American Academy of Otolaryngology and the Texas Medical Association. Many of the comments provided addressed not just the proposed amendment, but also the Board's interpretation of the scope of practice as set forth in §75.17 when it was originally adopted in 2006. The Texas Medical Association has sued the Board, challenging the Board's interpretation of the scope of practice of chiropractic under the Chiropractic Act. That litigation is ongoing, and to the extent that any of the following comments raise issues that are the subject of litigation, the Board recognizes that such issues may need to be reexamined after the litigation and any appeals, if necessary, have concluded.

Both comment letters declared that the proposed amendment exceeds the Board's rulemaking authority. The Board disagrees. Under Texas Occupations Code §201.1525, the Legislature has directed that the Board adopt rules clarifying the scope of practice of chiropractic, including requiring additional training or certification to perform certain procedures or use certain equipment. This amendment is consistent with that authority. No change was made in response to this comment.

One comment requested that the Board withdraw the proposed amendment. The Board disagrees. The Board has found that there is a need to clarify that Vestibular-Ocular-Nystagmus Testing is within the scope of practice of chiropractic and to set forth the additional training that is necessary in order to conduct Vestibular-Ocular-Nystagmus Testing. No change was made in response to this comment.

One comment asserted that the proposed amendment is in conflict with Article XVI, §31 of the Texas Constitution, which relates to practitioners of medicine, and provides that "[t]he Legislature may pass laws prescribing the qualifications of practitioners of

medicine in this State, and to punish persons for mal-practice, but no preference shall ever be given by law to any schools of medicine." The Board disagrees. The Legislature has enacted the Chiropractic Act and authorized the Board to regulate the practice of chiropractic in Texas as authorized under the Act. This proposed amendment is consistent with that lawful, statutory authority and with Article XVI, §31. No change was made in response to this comment.

Two comments stated that performance of Vestibular-Ocular-Nystagmus Testing is not within the scope of practice as described under Texas Occupations Code §201.002(b). The Board disagrees. Section 201.002(b) provides that a doctor of chiropractic may use "objective or subjective means to analyze, examine, or evaluate the biomechanical condition of the spine and musculoskeletal system of the human body." The Board has found that the use of Vestibular-Ocular-Nystagmus Testing to analyze, examine, or evaluate balance disorders associated with biomechanical condition of musculoskeletal system is consistent with §201.002(b). No change was made in response to this comment.

One comment noted that the proposed amendment exceeds the scope of practice of chiropractic as defined by law and impermissibly attempts to authorize the practice of medicine without a license issued by the Texas Medical Board. The Board disagrees. The Medical Practice Act, Texas Occupations Code §151.052(a)(3), provides that it does not apply to a licensed doctor of chiropractic "engaged strictly in the practice of chiropractic as defined by law." The scope of practice of chiropractic has been set forth under Texas Occupations Code §201.002(b) and (c) and §75.17 of this title. Those provisions provide the legal definition of the practice of chiropractic in Texas. This amendment will further clarify the legal definition of the scope of practice of chiropractic in Texas. No change was made in response to this comment.

One comment said that the scope of chiropractic under §201.002 in no way permits doctors of chiropractic to perform tests of vestibular impairment. The Board disagrees. As noted above, a doctor of chiropractic may use Vestibular-Ocular-Nystagmus Testing as part of an analysis, examination, or evaluation of balance disorders associated with the biomechanical condition of the spine and the musculoskeletal system. No change was made in response to this comment.

One comment asserted that chiropractors may not diagnose, but may only analyze, examine, or evaluate. Another comment argued that the Legislature deliberately excluded "diagnose" from §201.002(b). The Board disagrees. This issue was one being litigated. In its letter decision of November 24, 2009, the court noted that the Chiropractic Act does not preclude use of the word "diagnose." As there is not statutory limitation on the word "diagnose," the Board has applied the common meaning of the word in §75.17 as it relates to the scope of practice of chiropractic in Texas. No change was made in response to this comment.

One comment remarked that placing the phrase "differential diagnosis" in the preamble to the rule is a disingenuous attempt to establish in rule what the law specifically does not authorize. The Board disagrees. If the law was as clear and specific as this commenter suggested, we would not have been involved in litigation on this issue. No change was made in response to this comment.

One comment stated that Vestibular-Ocular-Nystagmus Testing is the practice of medicine because it is a diagnostic test. This



comment illustrates the dogmatic theory behind most of the comments, that Vestibular-Ocular-Nystagmus Testing is the practice of medicine because they say that it is. The Board disagrees. The Board has found that Vestibular-Ocular-Nystagmus Testing can be used by a doctor of chiropractic as a means to analyze, examine, or evaluate the biomechanical condition of the spine and musculoskeletal system. No change was made in response to this comment.

One comment asserted that chiropractic education, including the additional training included in the proposed rule, is insufficient to provide the level of education, skill, and expertise necessary to perform and interpret an electronystagmography or videonystagmography. One comment stated that Vestibular-Ocular-Nystagmus Testing should not be performed by chiropractors, regardless of their education or training. The Board disagrees with these comments. These comments were not supported with further evidence or argument illustrating how chiropractic education would be insufficient or showing what additional training would be appropriate. The Board has found, as described more fully above, that training in vestibular function is provided as part of a doctor of chiropractic's basic education in an accredited chiropractic college. As specified in this amendment, a doctor of chiropractic would need to successfully complete an additional 150 hours of clinical and didactic training in the technical and professional components of Vestibular-Ocular-Nystagmus Testing. No change was made in response to this comment.

One comment said that, even with the additional training specified in this amendment, doctors of chiropractic do not possess the necessary medical training to engage in Vestibular-Ocular-Nystagmus Testing, especially as it relates to generating a differential diagnosis and determining a plan of treatment. As noted above, the Board disagrees and has found that with the additional training required under this amendment, a doctor of chiropractic may conduct Vestibular-Ocular-Nystagmus Testing in order to generate a differential diagnosis as to whether chiropractic treatment is necessary or whether the patient should be referred to another health care provider. No change was made in response to this comment.

Both comment letters asserted that it is a danger to the health of Texans for individuals who are not licensed by the Texas Medical Board to perform electronystagmography or videonystagmography, noting that incorrect performance and/or interpretation of these tests can result in wrong side diagnosis, wrong site diagnosis, poor and/or incorrect patient counseling, and ineffective and potentially dangerous intervention. The Board recognizes the risk associated with a misreading of a Vestibular-Ocular-Nystagmus Testing, which is why the Board is specifying that Vestibular-Ocular-Nystagmus Testing may only be conducted with the successful completion of an additional 150 hours of training as specified in this amendment. If as a result of a Vestibular-Ocular-Nystagmus Testing, or any other test or examination, a doctor of chiropractic determines that a patient is not a candidate for chiropractic, the doctor has an obligation to refer the patient to another health care provider under §75.2(a)(1)(A) and §75.17(d)(1)(H) of this title. No change was made in response to this comment.

One comment noted that the ears and eyes are not part of the spine and musculoskeletal system. Indeed they are not. However, as noted above, a doctor of chiropractic may use Vestibular-Ocular-Nystagmus Testing as part of an analysis, examination, or evaluation of balance disorders associated with

the biomechanical condition of the spine and the musculoskeletal system. No change was made in response to this comment.

Two comments noted that disorders affecting the biomechanical condition of the spine and musculoskeletal system do not cause vestibular system pathology. That is correct. However, vestibular system pathologies can affect the role of the musculoskeletal system in providing the body with balance and form. No change was made in response to this comment.

One comment asserted that Vestibular-Ocular-Nystagmus Testing must be performed by and interpreted by a licensed physician, or under the direct supervision of a licensed physician, as part of the development of a diagnosis and treatment plan. The Board disagrees only to the extent that the Board has found that properly trained doctors of chiropractic may perform Vestibular-Ocular-Nystagmus Testing. Furthermore, as described under this amendment, the professional component of Vestibular-Ocular-Nystagmus Testing may not be delegated to a technician but must be directly performed by a qualified doctor of chiropractic. No change was made in response to this comment.

The rule amendment is adopted under Texas Occupations Code §201.152, relating to rules, and §201.1525, relating to rules clarifying scope of chiropractic. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.1525 requires the Board to adopt rules that clarify the scope of practice for chiropractors in the State of Texas, including requiring additional training or certification to perform certain procedures or use certain equipment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Glenn Parker

Executive Director

Texas Board of Chiropractic Examiners

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For further information, please call: (512) 305-6716



## **TITLE 31. NATURAL RESOURCES AND CONSERVATION**

### **PART 10. TEXAS WATER DEVELOPMENT BOARD**

#### **CHAPTER 371. DRINKING WATER STATE REVOLVING FUND**

The Texas Water Development Board (Board) adopts amendments to Chapter 371, §§371.1, 371.4 and 371.70 - 371.72, relating to the Drinking Water State Revolving Fund. The amendments are adopted without changes to the proposed text as published in the September 3, 2010, issue of the *Texas Register* (35 TexReg 8047).

#### **BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE AMENDMENTS**

Chapter 371 relating to Drinking Water State Revolving Fund was recently repealed and a new Chapter 371 issued to clarify and streamline the rules applicable to loan recipients and to improve the efficiency and administration of the DWSRF. The newly-issued Chapter 371 rules, which became effective on August 4, 2010, did not provide the executive administrator with the authority to release loan and grant proceeds into an escrow account, trust account or approved investment pool. In order to provide maximum program flexibility, amendments to Chapter 371 are being adopted that would provide the executive administrator with the authority to release loan and grant proceeds into an approved escrow, trust or investment pool account at the time of closing on all or part of a loan or grant.

In addition, the Board is adopting a minor change to §371.1 to the definition of "disadvantaged community" for clarification purposes and a change to §371.4 to clarify language relating to limitations on the amount of Source Water Protection financial assistance that may be provided to the Board's customers.

## SECTION BY SECTION DISCUSSION OF THE ADOPTED AMENDMENTS

### Subchapter A.

Section 371.1 relating to Definitions contains certain new and amended definitions that include the following terms: disadvantaged community, escrow, escrow agent, investment pool, state depository institution, trust and agency certificate and trust institution.

Section 371.4 relating to Other Authorized Activities has been modified to clarify the language relating to limitations on funding assistance.

### Subchapter G.

Subchapter G relating to Loan Closings and Availability of Funds provides details about the types of documents and their content necessary to close a loan where the Board purchases a local entity's bonds, or where the security provided is in the form of a promissory note and deed of trust. The subchapter also describes the methods for disbursing loan proceeds.

Section 371.70 relating to Loans Secured by Bonds or Other Authorized Securities requires a disbursement of loan funds at closing based on the receipt of outlay reports. Amendments to subsection (b)(2)(A) are adopted to allow the executive administrator to release loan and grant proceeds into an escrow account, trust account or investment pool account at the closing on all or a part of the loan or grant. The account must be kept separate from all other funds; it must also be maintained at a designated state depository institution, a properly chartered and licensed trust institution, or an investment pool approved by the executive administrator. Funds cannot be released from the escrow, trust or investment pool account without prior written approval of the executive administrator. Account statements must be forwarded to the Board on a monthly basis and the management and investment of such grant and loan proceeds must comply with the Public Funds Investment Act, Chapter 2256, Government Code, as amended and the Public Funds Collateral Act, Chapter 2257, Government Code, as amended.

Section 371.71 relating to Loans Secured by Promissory Notes and Deeds of Trust contains subsection (a) applicable to eligible entities that provide promissory notes and deeds of trust. Subsection (a) states that no loans shall close without a disbursement of some portion of from the loan funds. Subsection (b) describes the entities that may secure loans under this method.

Subsection (c) provides notice that the executive administrator may recommend that the applicant employ certain consultants to assist the entity in evaluating the proposed debt. Subsection (d) lists the documents required for loan closing and is amended to allow the executive administrator to release loan and grant proceeds into an escrow account, trust account or investment pool account at the closing on all or a part of the loan or grant. The account must be kept separate from all other funds; it must also be maintained at a designated state depository institution, a properly chartered and licensed trust institution, or an investment pool approved by the executive administrator. Funds cannot be released from the escrow, trust or investment pool account without prior written approval of the executive administrator. Account statements must be forwarded to the Board on a monthly basis and the management and investment of such grant and loan proceeds must comply with the Public Funds Investment Act, Chapter 2256, Government Code, as amended and the Public Funds Collateral Act, Chapter 2257, Government Code, as amended.

Section 371.72 relating to Disbursement of Funds provides notice in subsection (a) that loan disbursements are available only on a reimbursement basis for DWSRF loans unless the executive administrator approves the release of proceeds at closing into an approved escrow account, trust account or investment pool. Non-substantive changes and corrections to typographical errors are also adopted.

## PUBLIC COMMENTS

No comments were received regarding the proposed amendments.

## SUBCHAPTER A. GENERAL PROGRAM REQUIREMENTS

### 31 TAC §371.1, §371.4

#### STATUTORY AUTHORITY

The amendments are adopted under the authority of Water Code §6.101, which authorizes the Board to adopt rules necessary to carry out the powers and duties of the Board, and §15.977, which authorizes the Board to adopt rules regarding the Water Infrastructure Fund.

Cross reference to statute: Texas Water Code Chapters 15, 16, and 17.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Kenneth L. Petersen

General Counsel

Texas Water Development Board

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For further information, please call: (512) 463-8061



## SUBCHAPTER G. LOAN CLOSINGS AND AVAILABILITY OF FUNDS

### 31 TAC §§371.70 - 371.72

## STATUTORY AUTHORITY

The amendments are adopted under the authority of Water Code §6.101, which authorizes the Board to adopt rules necessary to carry out the powers and duties of the Board, and §15.977, which authorizes the Board to adopt rules regarding the Water Infrastructure Fund.

Cross reference to statute: Texas Water Code Chapters 15, 16, and 17.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Kenneth L. Petersen

General Counsel

Texas Water Development Board

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For further information, please call: (512) 463-8061



## TITLE 43. TRANSPORTATION

### PART 3. AUTOMOBILE BURGLARY AND THEFT PREVENTION AUTHORITY

#### CHAPTER 57. AUTOMOBILE BURGLARY AND THEFT PREVENTION AUTHORITY

##### 43 TAC §57.23

The Automobile Burglary and Theft Prevention Authority (ABTPA) adopts amendments to §57.23, relating to the ABTPA financial, progress, and inventory reports, with changes to the proposed text as published in the July 2, 2010, issue of the *Texas Register* (35 TexReg 5798). The text of the rule as amended will be republished.

The amendments change the reporting requirements for financial, progress and inventory reports from grantees to the ABTPA. The amendments to §57.23 define the reporting period to be on a fiscal year basis, instead of calendar year, beginning September 1 and ending August 31 of each year. Currently, grantee reporting is on a calendar year basis. The change to a fiscal year reporting period is consistent with the State of Texas' budgeting and reporting schedules. The amendments also set out deadlines for submission of the required reports and require monthly

progress reports instead of the current quarterly reports. The amendments will assist in better interface with the State of Texas' budgeting and reporting schedules and requirements, which will facilitate the agency's budget planning and grant monitoring, particularly as the ABTPA converts to an on-line reporting system. Other conforming changes are made to the section for consistency and clarity. The only change since publication is to add "the" before "following" in subsection (c).

No written comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 4413(37), §6(a), which the Authority interprets as authorizing it to adopt rules that implement its statutory powers and duties.

The following are the statutes, articles, or codes affected by the amendments: Article 4413(37), §6(a).

§57.23. *Financial, Progress, and Inventory Reports.*

(a) Each grantee shall submit financial, monthly progress and inventory reports in accordance with the instructions provided by the ABTPA on forms prescribed by the ABTPA. Financial and inventory reports must be signed by the financial officer. Progress reports must be signed by the project director.

(b) Monthly progress reports are due by the 5th business day of the following month.

(c) Financial reports are due quarterly and are due on the 5th business day of the following month after the end of each quarter.

(d) A complete inventory report is due once a year and is to be included with the fourth quarter report.

(e) For purposes of this section, reporting is on a fiscal year basis, beginning September 1 through August 31.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 5, 2010.

TRD-201005701

Charles Caldwell

Director

Automobile Burglary and Theft Prevention Authority

Effective date: October 25, 2010

Proposal publication date: July 2, 2010

For further information, please call: (512) 374-5101



# TEXAS DEPARTMENT OF INSURANCE

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## Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the *Texas Register* publishes notice of proposed actions by the Texas Department of Insurance. Notice of action proposed under Article 5.96 must be published in the *Texas Register* not later than the 30<sup>th</sup> day before the proposal is adopted. Notice of action proposed under Article 5.97 must be published in the *Texas Register* not later than the 10<sup>th</sup> day before the proposal is adopted. The Administrative Procedure Act, Government Code, Chapters 2001 and 2002, does not apply to department action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

### Texas Department of Insurance

#### Proposed Action on Rules

#### EXEMPT FILING NOTIFICATION PURSUANT TO TEXAS INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96

The Commissioner of Insurance (Commissioner) will hold a public hearing under Docket No. 2721 on November 10, 2010, at 9:30 a.m., in Room 100 of the William P. Hobby Building, 333 Guadalupe Street, in Austin, Texas, to consider a petition by the staff of the Texas Department of Insurance (Department) proposing the adoption of amendments to Rule XIX of the Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance (Basic Manual) and Part Four - E of the Texas Retrospective Rating Plan Manual for Workers' Compensation and Employers' Liability Insurance (Retro Manual) concerning changes in the number of hazard groups. Staff's petition (Reference No. W-1010-11-I) was filed on October 11, 2010.

Staff requests that the proposed revisions to Rule XIX of the Basic Manual and Part Four - E of the Retro Manual be made effective for workers' compensation policies with an effective date on or after May 1, 2011.

Section 2053.051 and Articles 5.77 and 5.96 of the Texas Insurance Code authorize the filing of the petition and the requested Commissioner's action. Section 2053.051 requires the Department to determine hazards by class. Article 5.77 authorizes the Department to make or approve and promulgate premium rating plans that may be approved on an optional basis to apply prospectively or retrospectively and may include premium discount plans, retrospective rating plans or other systems, plans or formulas. Article 5.96 authorizes the Department to prescribe, promulgate, adopt, approve, amend, or repeal standard and uniform manual rules, rating plans, classification plans, statistical plans, and policy and endorsement forms for various lines of insurance, including workers' compensation insurance.

Staff's petition proposes to add new Section J to Basic Manual Rule XIX, which is the expanded version of the Table of Classifications by Hazard Group. The revised Table of Classifications by Hazard Group expands the number of hazard groups from four to seven and updates the hazard group assignments to Texas classification codes. The proposed revision is necessary to provide a more precise classification of risks into more homogeneous groups, improve the ability to differentiate between classes, obtain optimal pricing accuracy, and distinguish more accurately between risks with high large-loss potential and risks with low large-loss potential.

The petition also proposes an amendment to Section E of Basic Manual Rule XIX, specifying that the Table of Classifications by Hazard Group is located in Basic Manual Rule XIX, Section J.

Additionally, the petition proposes to replace the current Table of Classification by Hazard Group in Part Four - E of the Retro Manual with a revised, expanded Table of Classifications by Hazard Group. The proposed Table of Classifications by Hazard Group in the Retro Manual expands the number of hazard groups from four to seven and updates the hazard group assignments to Texas classification codes. The proposed revision is necessary for the same reasons as the addition of the proposed Table of Classification by Hazard Groups as Section J of Rule XIX in the Basic Manual. The addition of the proposed revised Table of Classification by Hazard Groups to both the Basic and the Retro Manuals is necessary to facilitate the ease of use of both Manuals.

Copies of the full text of the staff petition and the proposed exhibits are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the petition and proposed exhibits, please contact Sylvia Gutierrez at ChiefClerk@tdi.state.tx.us, (512) 463-6327 (Reference No. W-1010-11-I).

Comments on the proposed amendments may be submitted in writing by 5:00 p.m. on November 22, 2010, to Gene Jarmon, General Counsel and Chief Clerk, Texas Department of Insurance, P.O. Box 149104, Mail Code 113-2A, Austin, Texas 78714-9104. An additional copy of the comments should be simultaneously submitted to Nancy Moore, Deputy Commissioner, Workers' Compensation Classification and Premium Calculation Division, Texas Department of Insurance, P.O. Box 149104, Mail Code 105-2A, Austin, Texas 78714-9104. Interested persons may also submit oral and/or written comments at the hearing.

This notification is made pursuant to Article 5.96 of the Texas Insurance Code, which exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, Chapter 2001).

TRD-201005791

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: October 11, 2010



Proposed Action on Rules

EXEMPT FILING NOTIFICATION PURSUANT TO TEXAS INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96

The Commissioner of Insurance (Commissioner) will hold a public hearing under Docket No. 2722 on November 10, 2010, at 9:30 a.m., in Room 100 of the William P. Hobby Building, 333 Guadalupe Street, in Austin, Texas, to consider a petition by the staff of the Texas Department of Insurance (Department) proposing the adoption of amendments to Rule XIX of the Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance (Basic Manual) concerning the deductible programs. Staff's petition (Reference No. W-1010-12-I) was filed on October 11, 2010.

Staff requests that the proposed updated tables amending the Basic Manual Rule XIX be made effective for workers' compensation policies with an effective date on or after May 1, 2011.

Article 5.96 and §2053.202 of the Texas Insurance Code authorize the filing of the petition and the requested Commissioner's action. Section 2053.202 requires the Department to adopt at least three optional deductible plans that allow a workers' compensation insurance policyholder to self-insure for the amount of the deductible.

Staff's petition proposes to amend Basic Manual Rule XIX to update the deductible credit tables for the three promulgated deductible programs: per accident deductible, aggregate deductible, and per accident/aggregate deductible. The proposed change in the level of the deductible credits reflects the improved loss experience in Texas in recent years. The proposed change also adjusts the premium level for those policyholders selecting one of the three promulgated deductible programs to be in compliance with the rate standard set forth in §2053.002(b) of the Texas Insurance Code.

The proposed change in the deductible credits further reflects the concurrent proposed expansion of the hazard groups from four groups to seven groups. The proposed change from four hazard groups to seven hazard groups is addressed in a separate staff petition (Reference No. W-1010-11-I), filed on October 11, 2010.

Copies of the full text of the staff petitions and the proposed updated deductible credit tables are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the petitions and proposed tables, please contact Sylvia Gutierrez at ChiefClerk@tdi.state.tx.us, (512) 463-6327 (Reference Nos. W-1010-11-I and W-1010-12-I).

Comments on the proposed amendments may be submitted in writing by 5:00 p.m. on November 22, 2010, to Gene Jarmon, General Counsel and Chief Clerk, Texas Department of Insurance, P.O. Box 149104, Mail Code 113-2A, Austin, Texas 78714-9104. An additional copy of the comments should be simultaneously submitted to Nancy Moore, Deputy Commissioner, Workers' Compensation Classification and Premium Calculation Division, Texas Department of Insurance, P.O. Box 149104, Mail Code 105-2A, Austin, Texas 78714-9104. Interested persons may also submit oral and/or written comments at the hearing.

This notification is made pursuant to Article 5.96 of the Texas Insurance Code, which exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, Chapter 2001).

TRD-201005792

Gene C. Jarmon  
General Counsel and Chief Clerk  
Texas Department of Insurance  
Filed: October 11, 2010

Proposed Action on Rules

EXEMPT FILING NOTIFICATION PURSUANT TO TEXAS INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96

The Commissioner of Insurance (Commissioner) will hold a public hearing under Docket No. 2723 on November 10, 2010, at 9:30 a.m., in Room 100 of the William P. Hobby Building, 333 Guadalupe Street, in Austin, Texas, to consider a petition by the staff of the Texas Department of Insurance (Department) proposing the adoption of amendments to the Texas Retrospective Rating Plan Manual for Workers' Compensation and Employers' Liability Insurance (Retro Manual) concerning the Excess Loss Premium Factors in Part Four - F and the Longshore and Harbor Workers' Compensation Act (LHWCA) Excess Loss Premium Factors in Part Four - G. Staff's petition (Reference No. W-1010-13-I) was filed on October 11, 2010.

Staff requests that the updated tables for the Excess Loss Premium Factors and the LHWCA Excess Loss Premium Factors in the Retro Manual be made effective for workers' compensation policies with an effective date on or after May 1, 2011.

Articles 5.96 and 5.77 of the Texas Insurance Code authorize the filing of the petition and the requested Commissioner's action. Article 5.77 authorizes the Department to make or approve and promulgate premium rating plans that may be approved on an optional basis to apply prospectively or retrospectively and may include premium discount plans, retrospective rating plans or other systems, plans or formulas. Article 5.96 authorizes the Department to prescribe, promulgate, adopt, approve, amend, or repeal standard and uniform manual rules, rating plans, classification plans, statistical plans, and policy and endorsement forms for various lines of insurance, including workers' compensation insurance.

Staff's petition proposes to amend the Retro Manual by updating the tables for the Excess Loss Premium Factors in Part Four - F and the LHWCA Excess Loss Premium Factors in Part Four - G. The proposed change reflects the concurrent proposed expansion of the hazard groups from four groups to seven groups. The proposed change from four hazard groups to seven hazard groups is addressed in a separate staff petition (Reference No. W-1010-11-I), filed on October 11, 2010. The proposed update of the excess loss premium factors is necessary because excess loss premium factors vary by hazard group.

Copies of the full text of the staff petitions and the proposed updated excess loss premium factors tables are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the petitions and proposed tables, please contact Sylvia Gutierrez at ChiefClerk@tdi.state.tx.us, (512) 463-6327 (Reference Nos. W-1010-11-I and W-1010-13-I).

Comments on the proposed amendments may be submitted in writing by 5:00 p.m. on November 22, 2010, to Gene Jarmon, General Counsel and Chief Clerk, Texas Department of Insurance, P.O. Box 149104, Mail Code 113-2A, Austin, Texas 78714-9104. An additional copy of the comments should be simultaneously submitted to Nancy Moore, Deputy Commissioner, Workers' Compensation Classification and Premium Calculation Division, Texas Department of Insurance, P.O. Box 149104, Mail Code 105-2A, Austin, Texas 78714-9104. In-

terested persons may also submit oral and/or written comments at the hearing.

This notification is made pursuant to Article 5.96 of the Texas Insurance Code, which exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, Chapter 2001).

TRD-201005793

Gene C. Jarmon  
General Counsel and Chief Clerk  
Texas Department of Insurance  
Filed: October 11, 2010

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# REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

## Agency Rule Review Plan

State Board for Educator Certification

### Title 19, Part 7

TRD-201005836

Filed: October 13, 2010



## Adopted Rule Reviews

Commission on State Emergency Communications

### Title 1, Part 12

The Commission on State Emergency Communications' (CSEC) notice of intent to review Chapter 254, §254.1 and §254.2, was published in the July 23, 2010, issue of the *Texas Register* (35 TexReg 6541).

CSEC has determined that the reasons for initially adopting the rules continue to exist.

No comments were received regarding CSEC's notice of review.

CSEC concludes its statutory review by readopting, without amendment, §254.1 and §254.2.

TRD-201005830

Patrick Tyler

General Counsel

Commission on State Emergency Communications

Filed: October 13, 2010



General Land Office

### Title 31, Part 1

In accordance with the notice of proposed rule review published in the May 7, 2010, issue of the *Texas Register* (35 TexReg 3653), the Texas General Land Office (GLO) has reviewed and considered for readoption, revision or repeal Title 31, Part 1, Chapter 17, §§17.1 - 17.50, Hearing Procedures for Administrative Penalties and Removal of Unauthorized or Dangerous Structures on State Land. The rule review was conducted under the GLO's rule review plan published in the April 23, 2010, issue of the *Texas Register* (35 TexReg 3297), as required by Texas Government Code §2001.039.

No public comments were received on the proposed rule review.

The GLO considered, among other things, whether the reasons for adoption of these rules continue to exist. As a result of the review, the GLO determined that the rules are still necessary and readopts the sections without change.

This completes the GLO's review of Title 31, Part 1, Chapter 17, §§17.1 - 17.50, Hearing Procedures for Administrative Penalties and Removal of Unauthorized or Dangerous Structures on State Land.

TRD-201005777

Trace Finley

Deputy Commissioner, Policy and Governmental Affairs

General Land Office

Filed: October 11, 2010



In accordance with the notice of proposed rule review published in the May 7, 2010, issue of the *Texas Register* (35 TexReg 3653), the Texas General Land Office (GLO) has reviewed and considered for readoption, revision or repeal Title 31, Part 1, Chapter 25, §§25.1 - 25.22, Beach Cleaning and Maintenance Assistance Program. The rule review was conducted under the GLO's rule review plan published in the April 23, 2010, issue of the *Texas Register* (35 TexReg 3297), as required by Texas Government Code §2001.039.

No public comments were received on the proposed rule review.

The GLO considered, among other things, whether the reasons for adoption of these rules continue to exist. As a result of the review, the GLO determined that the rules in Title 31, Part 1, Chapter 25, §§25.1 - 25.22, Beach Cleaning and Maintenance Assistance Program, are still necessary, with revisions to reflect recent legislative changes and agency practices. A Notice of Proposed Rulemaking to adopt amendments to Chapter 25 is published elsewhere in this issue.

This completes the GLO's review of Title 31, Part 1, Chapter 25, §§25.1 - 25.22, Beach Cleaning and Maintenance Assistance Program.

TRD-201005778

Trace Finley

Deputy Commissioner, Policy and Governmental Affairs

General Land Office

Filed: October 11, 2010



# TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.



Figure: 16 TAC §25.193(c)

$\frac{\{[\sum_{i=1}^N (NWTR_i * NL_i) - \sum_{i=1}^N (BWTR_i * NL_i)] * 1/2 * ALLOC\} + ADJ}{BD}$	
Where:	NWTR <sub>i</sub> is the new wholesale transmission rate of a TSP, approved by the commission by order or pursuant to commission rules, since the DSP's last rate case;
	BWTR <sub>i</sub> is the base wholesale transmission rate of the TSP represented in the NWTR <sub>i</sub> , used to develop the retail transmission charges of the DSP in the DSP's last rate case;
	NL <sub>i</sub> is the DSP's individual 4CP load component of the total ERCOT 4CP load information used to develop the NWTR <sub>i</sub> ;
	$ADJ = \sum_{p=1}^6 \{EXP_p - (REV_p - ADJP_1 - ADJP_2)\}$
	<p>Where:</p> <p>ADJ = adjustment to Rate Class TCRF;</p> <p>EXP<sub>p</sub> = transmission expenses not included in base rates for period p;</p> <p>REV<sub>p</sub> = TCRF revenue for period p;</p> <p>ADJP<sub>1p</sub> = 1/6<sup>th</sup> of ADJ calculated in the previous TCRF update for the periods 5 and 6;</p> <p>ADJP<sub>2p</sub> = 1/6<sup>th</sup> of ADJ calculated in second previous TCRF update for the periods 1 through 4;</p> <p>ALLOC is the class allocator approved by the commission to allocate the transmission revenue requirement among classes in the DSP's last rate case, unless otherwise ordered by the commission; and,</p>

	BD is each class's billing determinant (kilowatt-hour (kWh), or kilowatt (kW), or kilovolt-ampere (kVa)) for the previous March 1 through August 31 period for the March 1 TCRF update, and for the previous September 1 through February 28 period for the September 1 TCRF update.
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County District # \_\_\_\_\_  
District Name :

5	4	Determination of Points			1	0
		3	2			
> 98%	> 95% <= 98%	> 92% <= 95%	> 89% <= 92%	> 86% <= 89%	= < 86%	
Yes					No	
< \$350	=> \$350 < \$600	=> \$600 < \$850	=> \$850 < \$1100	=> \$1,100 < \$1,350	=> \$1,350	
Yes					No	
Yes					No	
Yes					No	
Yes					No	
Yes					No	
=> 1.00	=> 0.95 < 1.00	=> 0.90 < 0.95	=> 0.85 < 0.90	=> 0.80 < 0.85	< 0.80	
Yes					No	
<= 100%	> 100% <= 105%	> 105% <= 110%	> 110% <= 115%	> 115% <= 120%	> 120%	
<= 100%	> 95% <= 100%	=> 90% <= 95%	> 85% <= 90%	=> 80% <= 85%	> 80%	
<= 100%	> 100% <= 105%	> 105% <= 110%	> 110% <= 115%	> 115% <= 120%	> 120%	
<= 100%	> 95% <= 100%	=> 90% <= 95%	=> 85% <= 90%	=> 80% <= 85%	> 80%	
<= 150%	> 150% <= 152.5%	> 152.5% <= 155.0%	> 155.0% <= 157.5%	> 157.5% <= 160.0%	> 160.0%	
<= 50%	> 47.5% <= 50%	> 45.0% <= 47.5%	> 42.5% <= 45.0%	> 40.0% <= 42.5%	= < 40.0%	
< 20%	=> 20% < 21%	=> 21% < 22%	=> 22% < 23%	=> 23% < 24%	=> 24%	
> \$16	> \$14 <= \$15	> \$13 <= \$14	> \$12 <= \$13	> \$11 <= \$12	= < \$11	

Determination Of School District Rating

A.	Did The District Answer No To Indicators 1, 2, 3, Or 4; OR Both 5 and 6 If The District Answered No To Either, The District's Rating Is Sub-Standard Achievement	Points ≥ 67 ≤ 75
	Determine Rating By Applicable Number Of Points	
B.	Superior Achievement	≥ 67 ≤ 75
	Above Standard Achievement	≥ 59 < 67
	Standard Achievement	≥ 51 < 59
	Substandard Achievement (If Less Than 51 points, OR If The District Answered No To Indicators 1, 2, 3, Or 4, OR Both 5 And 6	< 51 OR Answered No To One Default Indicator

Administrative Cost Ratio Indicator 15	
ADA Group	Standard
10,000 and Above	0.1105
5,000 to 9,999	0.1250
1,000 to 4,999	0.1401
500 to 999	0.1561
Less than 500	0.2654
Sparse	0.3614

\*\* UL = Upper Limit

\*\*\* LL = Lower Limit

For Questions Call The Division Of School Financial Audits At (512) 463-9095

Completed By: \_\_\_\_\_ Date: \_\_\_\_\_

Notes: \_\_\_\_\_

District Size - Number Of Students Between		Ranges For Ratios	
Indicator 16		Low	High
	< 500	7.0	22
	500	9.99	22
	1,000	10.0	22
	4,999	11.5	22
	5,000	13.0	22
	9,999	13.5	22
	≥ 10,000		
Indicator 17			
	< 500	5.0	14
	500	9.99	14
	1,000	4,999	6.3
	5,000	9,999	6.8
	≥ 10,000	7.0	14

### School FIRST - Rating Worksheet Calculations Dated July 2010

	Indicator	Calculation Defined
1	Was Total Fund Balance Less Reserved Fund Balance Greater Than Zero In The General Fund?	$A > 0$ Where $A = [\text{Aggregate Of Unreserved, Designated Fund Balance And Unreserved, Undesignated Fund Balance In General Fund At June 30 or August 31 Depending On Fiscal Year End}]$
2	Was the Total Unrestricted Net Asset Balance (Net of the Accretion of Interest for Capital Appreciation Bonds) in the Governmental Activities Column in the Statement of Net Assets Greater Than Zero? (If The District's Five-Year Percent Change In Students Was A 10% Increase Or More Then The District Answers Yes)	If $((C - D) / D) \times 100 < 10\%$ Then Continue Calculation $A + B > 0$ Where $A = [\text{Total Unreserved Net Asset Balance in the Governmental Activities Column in Exhibit A-1, Statement of Net Assets in the Annual Financial Report}]; B = [\text{Accretion of Interest for Capital Appreciation Bonds}]; C = [\text{Number Of Students In Year 5 From Base Year}]; D = [\text{Number Of Students In Base Year}]$
3	Were There No Disclosures In The Annual Financial Report And/Or Other Sources Of Information Concerning Default On Bonded Indebtedness Obligations?	No Calculation Involved
4	Was The Annual Financial Report Filed Within One Month After November 27th or January 28th Deadline Depending Upon The District's Fiscal Year End Date (June 30th or August 31st)?	No Calculation Involved
5	Was There An Unqualified Opinion In Annual Financial Report?	No Calculation Involved
6	Did The Annual Financial Report <b>Not</b> Disclose Any Instance(s) Of Material Weaknesses In Internal Controls?	No Calculation Involved
7	Was The Three-Year Average Percent Of Total Tax Collections (Including Delinquent) Greater Than 98%?	$((A / B) \times 100)$ Where $A = [\text{Tax Collections For Three Years }]; B = [\text{Tax Levy For Three Years}]$ Reported In Exhibit J-1 Schedule of Delinquent Taxes Receivable In The Annual Financial Report
8	Did The Comparison Of PEIMS Data To Like Information In Annual Financial Report Result In An Aggregate Variance Of Less Than 3 Percent Of Expenditures Per Fund Type (Data Quality Measure)?	$((A / B) \times 100)$ Of C Where $A = [\text{Absolute Value Of All Differences In Expenditures In Exhibit C-2 Statement of Revenues, Expenditures, and Changes in Fund Balance And PEIMS}]; B = [\text{Sum Of Expenditure In PEIMS Per Fund Type Presented In Exhibit C-2}]; C = [\text{Fund Class}]$

July 2010

### School FIRST - Rating Worksheet Calculations Dated July 2010

	Indicator	Calculation Defined
9	Were Debt Related Expenditures (Net Of IFA And/Or EDA Allotment) Less Than \$350 Per Student? (If The District's Five-Year Percent Change In Students Was A 7% Increase Or More, Or If Property Taxes Collected Per Penny Of Tax Effort Were More Than \$200,000 Per Student, Then The District Receives 5 Points)	If $((B - D) / D) \times 100 < 7\%$ Or $E / F < \$200,000$ , Then Continue Calculation $((A - C) / B)$ Where $A =$ [Function 71 Expenditures Report In The Debt Service And General Funds (Excluding Expenditure Object Codes 6524 and 6525)]; $B =$ [Number Of Students In Year 5 From Base Year]; $C =$ [IFA + EDA Allotments]; $D =$ [Number Of Students In Base Year]; $E =$ [Total Tax Collections]; $F =$ [Total Tax Rate In Pennies]
10	Was There No Disclosure In The Annual Audit Report Of Material Noncompliance?	No Calculation Involved
11	Did The District Have Full Accreditation Status In Relation To Financial Management Practices? (e.g., Monitor, Conservator, Management Team, or Board of Managers Assigned)	No Calculation Involved
12	Was The Aggregate Of Budgeted Expenditures And Other Uses Less Than The Aggregate Of Total Revenues, Other Resources and Fund Balance in General Fund?	$(A + B) - (C + D + E) < 0$ Where $A =$ [Budgeted Appropriations In General Fund]; $B =$ [Budgeted Other Uses In The General Fund]; $C =$ [Budgeted Revenues In General Fund]; $D =$ [Budgeted Other Resources In The General Fund]; $E =$ [Fund Balance In General Fund At July 1 or September 1 Depending On Fiscal Year End]
13	If The District's Aggregate Fund Balance In The General Fund And Capital Projects Fund Was Less Than Zero, Were Construction Projects Adequately Financed? (Were Construction Projects Adequately Financed Or Adjusted By Change Orders Or Other Legal Means To Avoid Creating Or Adding To The Fund Balance Deficit Situation?)	If $(C + D) < 0$ Then Continue Calculation As $(A - B - (C + D)) < 0$ Where $A =$ [Expenditures Function 81 In General Fund and Capital Projects Fund]; $B =$ [Other Resources For Real Property Financing In General Fund and Capital Projects Fund]; $C =$ [Fund Balance In General Fund At July 1 or September 1 Depending On Fiscal Year End]; $D =$ [Fund Balance In Capital Projects Fund At July 1 or September 1 Depending On Fiscal Year End]
14	Was The Ratio Of Cash And Investments To Deferred Revenues (Excluding Amount Equal To Net Delinquent Taxes Receivable) In The General Fund Greater Than Or Equal To 1:1? (If Deferred Revenues Are Less Than Net Delinquent Taxes Receivable, Then The District Receives 5 Points)	If $B > 0$ Then Continue Calculation As $(A / B)$ Where $A =$ [Cash And Investments In General Fund]; $B =$ [Deferred Revenue In General Fund – Property Tax Receivable Net Of Uncollectible]

July 2010

### School FIRST - Rating Worksheet Calculations Dated July 2010

	Indicator	Calculation Defined
15	Was The Administrative Cost Ratio Less Than The Threshold Ratio? (See Ranges Below)	(A>B) A = [Acceptable Administrative Cost Ratio]; B = [Administrative Cost Ratio Of The District]
16	Was The Ratio Of Students To Teachers Within The Ranges Shown Below According To District Size? (See Ranges Below)	(A / B) Where A = [Number Of Students]; B = [Number Of Teachers FTEs]
17	Was The Ratio Of Students To Total Staff Within The Ranges Shown Below According To District Size? (See Ranges Below)	(A / B) Where A = [Number Of Students]; B = [Total Staff FTEs]
18	Was The Total Fund Balance In The General Fund More Than 50% And Less Than 150% of Optimum According To The Fund Balance and Cash Flow Calculation Worksheet in the Annual Financial Report?	Deficient Fund Balance Amount In General Fund Is Defined As $A < ((B \times .5))$ And Excess Is Defined As $A > (B \times 1.5)$ Where A = [Total General Fund Balance At June 30, 20XX or August 31, 20XX Depending On Fiscal Year End]; B = Line 10 in Exhibit J-3, Fund Balance and Cash Flow Calculation Worksheet in the Annual Financial Report.
19	Was The Decrease In Undesignated Unreserved Fund Balance Less Than 20% Over Two Fiscal Years? (If 1.5 Times Optimum Fund Balance Is Less Than Total Fund Balance In General Fund Or If Total Revenues Exceeded Operating Expenditures In The General Fund, Then The District Receives 5 Points).	If $(A - B) > 0$ And Optimum Fund Balance $\times 1.5$ Is Less Than Total Fund Balance In General Fund And $[C] \times .80 > [D]$ , Then Continue Calculation $[A] - [B]$ Where A = [Expenditures In General Fund In Functions 11 Through 61 And Expenditure Object Codes 6100 Through 6400]; B = [Total Revenues In General Fund]; C = [Undesignated, Unreserved Fund Balance In General Fund At June 30 or August 31, Depending On Fiscal Year End, Two Fiscal Years Prior]; D= [Undesignated, Unreserved Fund Balance In General Fund For The Last Fiscal Year]
20	Was The Aggregate Total Of Cash And Investments In The General Fund More Than \$0?	$A > 0$ Where A = [Cash and Investments In General Fund]
21	Were Investment Earnings In All Funds (Excluding Debt Service Fund And Capital Projects Fund) More Than \$15 Per Student?	(A / B) Where A = [Investment Earnings In All Funds Except Debt Service Fund And Capital Projects Fund]; B = [Number Of Students]

July 2010

Indicator 15	
ADA Group	Standard
10,000 and Above	0.1105
5,000 to 9,999	.1250
1,000 to 4,999	.1401
500 to 999	.1561
Less than 500	.2654
Sparse	0.3614

		Ranges for Ratios	
District Size - Number of Students Between		Low	High
Indicator 16			
	<500	7.0	22
500	999	10.0	22
1,000	4,999	11.5	22
5,000	9,999	13.0	22
=>10,000		13.5	22
Indicator 17			
	<500	5.0	14
500	999	5.8	14
1,000	4,999	6.3	14
5,000	9,999	6.8	14
=>10,000		7.0	14

For Questions Call The Division Of School Financial Audits At (512) 463-9095

July 2010



Figure: 19 TAC §109.1002(g)

School FIRST for Charter Schools - Rating Worksheet Dated July 2010  
 School Year \_\_\_\_\_ or August 31, \_\_\_\_\_  
 Fiscal Year Ended June 30, \_\_\_\_\_  
 County District # \_\_\_\_\_  
 Charter School Name \_\_\_\_\_

Critical Indicators		Check The Appropriate Box Below		Determination Of Points						
		Yes	No	Points						
				4	3	2	1	0		
1	Did The Charter School (CS) Avoid Holds On Payments That Were Not Cleared Within 30 Days, As A Result Of Unimpeachable Deposits To TRS Or TWC?									
2	Was The Total Net Asset Balance In The Statement Of Financial Position For The CS Greater Than Zero? (If The CS's Five-Year Percent Change In Students Was A 10% Increase Or More Then Answer Yes)									
3	* Were There No Disclosures In The Charter Holder's (CH's) Annual Financial Report And/Or Other Sources Of Information Concerning Default On Debt?									
4	* Was The CH's Annual Financial Report Filed Within One Month After The November 27th Or January 28th Deadline Depending Upon The CS's Fiscal Year End Date (June 30th Or August 31st)?									
5	* Was There An Unqualified Opinion In The CH's Annual Financial Report?									
6	* Did The CH's Annual Financial Report Not Disclose Any Instance(s) Of Material Weaknesses In Internal Controls?									
Fiscal Responsibility And Data Quality										
7	Do The CS's Assets Cover At Least 80% Of Its Liabilities?	Yes								
8	Did The Comparison Of PEIMS Data To Like Information In The CS's Annual Financial Report Result In An Aggregate Variance Of Less Than 3 Percent Of All Expenses (Data Quality Measure)?	Yes								
9	Were The CS's Debt Related Expenses Less Than \$200 Per Student? (If The CS's Five-Year Percent Change In Students Was A 7% Increase Or More, Then The CS Receives 5 Points)	< \$200								
10	* Was There No Disclosure In The CH's Annual Audit Report Of Material Noncompliance?	Yes								
11	Did The CS Have Full Accreditation Status In Relation To Financial Management Practices? (e.g. No Monitor, Conservator, Management Team, Or Board Of Managers Assigned)	Yes								
Budgeting										
12	Was The CS's Aggregate Of Budgeted Expenses Less Than The Aggregate Of Budgeted Total Revenues And Cash And Investments At Beginning Of Year?	Yes								
13	Was The CS's Current Ratio For All Net Asset Groups Greater Than Or Equal To 1:1?	=> 1.00								
Personnel										
14	Was The CS's Administrative Cost Ratio Less Than The Threshold Ratio? (See Ranges Below)	Yes								
15	Was The Ratio Of Students To Teachers Within The Ranges Shown Below According To CS Size? (See Ranges Below)	**UL <= 100% ***LL >= 100%								
16	Was The Ratio Of Students To Total Staff Within The Ranges Shown Below According To The CS's Size? (See Ranges Below)	**UL <= 100% ***LL >= 100%								
Cash Management										
17	Would The CS's Existing Assets Cover Two Months Of Operating Expenses? (Liquid Funds Indicator)	Yes								
18	Was The Decrease In The CS's Total Net Assets Less Than 20% Over Two Fiscal Years? (Calculation Excludes Depreciation And Amortization)	< 20.00%								
19	Was The CS's Aggregate Total Of Cash And Investments More Than \$0?	Yes								
20	Were The CS's Investment Earnings In All Net Asset Groups More Than \$5 Per Student?	> \$5								
21	Could The CS Operate For Two Months Without Additional Funds? (Defensive Interval)	>= 2.00								

Determination Of Charter School Rating		
A.	Did The Charter School Answer No To Indicators 1, 2, 3, Or 4? OR Both 5 And 6? If The Charter School Answered No To Either, The Charter School's Rating Is Substandard Achievement	
B.	Determine Rating By Applicable Number Of Points	Points
	Superior Achievement	>= 64 <= 75
	Above Standard Achievement	>= 54 < 64
	Standard Achievement	>= 43 < 54
	Substandard Achievement (If Less Than 43 points, OR If The Charter School Answered No To Indicators 1, 2, 3, Or 4, OR Both 5 And 6)	<43 or Answered No To One Default Indicator

Administrative Cost Ratio Indicator 14	
ADA Group	Standard
10,000 and Above	0.1105
5,000 to 9,999	0.1250
1,000 to 4,999	0.1401
500 to 999	0.1561
Less than 500	0.2654
Sparse	0.3614

\*\* UL = Upper Limit  
\*\*\* LL = Lower Limit

\* In accordance with generally accepted accounting principles established by the Financial Accounting Standards Board (FASB), the financial statements for a non-profit entity must be presented with an aggregate view of the entity as a whole. The indicators with an asterisk are based on the results of the audited financial statements for the entity as a whole. All other indicators are calculated for the financial results presented for the specific-purpose financial statements relating to the operations of the individual charter school.

For Questions Call The Division Of School Financial Audits At (512) 463-9095

Completed By: \_\_\_\_\_ Date: \_\_\_\_\_

Notes:
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Indicator 15	Charter School Size - Number Of Students Between		Ranges For Ratios	
			Low	High
Indicator 15		< 500	7.0	22
		500	10.0	22
		1,000	11.5	22
		5,000	13.0	22
		=> 10,000	13.5	22
Indicator 16		< 500	5.0	14
		500	5.8	14
		1,000	6.3	14
		5,000	6.8	14
		=> 10,000	7.0	14

**School FIRST for Charter Schools - Rating Worksheet Calculations**  
**Dated July 2010**

	<b>Indicator</b>	<b>Calculation Defined</b>
1	Did The Charter School (CS) Avoid Holds on Payments That Were Not Cleared Within 30 Days, as a Result of Untimely Deposits to TRS or TWC?	No Calculation Involved; Source: e-mails from TEA Accounting regarding FSP holds (if not cleared in < 30 days)
2	Was The Total Net Asset Balance In The Statement Of Financial Position for the CS Greater Than Zero? (If The CS's Five-Year Percent Change In Students Was A 10% Increase Or More Then Answer Yes)	If $((B - C) / C) \times 100 < 10\%$ Then Continue Calculation A > 0 Where A = Total Net Asset Balance in the Statement of Financial Position in the Annual Financial Report; B = [Number Of Students In Year 5 From Base Year]; C = [Number Of Students In Base Year]
3	*	Were There No Disclosures In The Charter Holder's (CH's) Annual Financial Report And/Or Other Sources Of Information Concerning Default On Debt?
4	*	Was The CH's Annual Financial Report Filed Within One Month After November 27th or January 28th Deadline Depending Upon The CS's Fiscal Year End Date (June 30th or August 31st)?
5	*	Was There An Unqualified Opinion In The CH's Annual Financial Report?
6	*	Did The CH's Annual Financial Report Not Disclose Any Instance(s) Of Material Weaknesses In Internal Controls?
7		Do The CS's Assets Cover At Least 80% Of Its Liabilities?
8		Did The Comparison Of PEIMS Data To Like Information In The CS's Annual Financial Report Result In An Aggregate Variance Of Less Than 3 Percent Of All Expenses (Data Quality Measure)?
9		Were The CS's Debt Related Expenses Less Than \$200 Per Student? (If The CS's Five-Year Percent Change In Students Was A 7% Increase Or More, Then The CS Receives 5 Points)
10	*	Was There No Disclosure In The CH's Annual Audit Report Of Material Noncompliance?

July 2010

<b>School FIRST for Charter Schools - Rating Worksheet Calculations</b> <b>Dated July 2010</b>		
	<b>Indicator</b>	<b>Calculation Defined</b>
11	Did The CS Have Full Accreditation Status In Relation To Financial Management Practices? (e.g. No Monitor, Conservator, Management Team, Or Board of Managers Assigned)	No Calculation Involved
12	Was The CS's Aggregate Of Budgeted Expenses Less Than The Aggregate Of Budgeted Total Revenues And Cash And Investments At Beginning Of Year?	$(A) < (B + C)$ Where A = [Budgeted Expenses in the Budgetary Comparison Schedule]; B = [Budgeted Revenues In the Budgetary Comparison Schedule]; [C = [Cash And Investments on the Statement of Financial Position At July 1 or September 1 Depending On Fiscal Year End]
13	Was The CS's Current Ratio For All Net Asset Groups Greater Than Or Equal To 1:1?	If $B > 0$ Then Continue Calculation As $(A / B)$ Where A = [Current Assets in All Net Asset Groups]; B = [Current Liabilities in All Net Asset Groups]
14	Was The CS's Administrative Cost Ratio Less Than The Threshold Ratio? (See Ranges Below)	$(A > B)$ Where A = [Acceptable Administrative Cost Ratio]; B = [Administrative Cost Ratio Of The Charter]
15	Was The Ratio Of Students To Teachers Within The Ranges Shown Below According To CS Size? (See Ranges Below)	$(A / B)$ Where A = [Number Of Students]; B = [Number Of Teacher FTEs]
16	Was The Ratio Of Students To Total Staff Within The Ranges Shown Below According To CS Size? (See Ranges Below)	$(A / B)$ Where A = [Number Of Students]; B = [Total Staff FTEs]
17	Would The CS's Existing Assets Cover Two Months Of Operating Expenses? (Liquid Funds Indicator)	$(A - B - (C + (D - E)) / ((F - G) / 12) > = 2$ , Where A = [Total Net Assets]; B = [Permanently Restricted Net Assets]; C = [Land]; D = [Property, Plant & Equipment]; E = [Accumulated Depreciation]; F = [Total Expenses]; G = [Depreciation Expense]
18	Was The Decrease In The CS's Total Net Assets Less Than 20% Over Two Fiscal Years? (Calculation Excludes Depreciation and Amortization)	$(A + C) \times .80 > (B + D)$ , A = [Net Assets At June 30 or August 31, Depending On Fiscal Year End, Two Fiscal Years Prior]; B= [Net Assets For The Last Fiscal Year]; C=[Accumulated Depreciation, Two Fiscal Years Prior]; D = =[Accumulated Depreciation For The Last Fiscal Year]
19	Was The CS's Aggregate Total Of Cash And Investments More Than \$0?	$A > 0$ Where A = [Cash and Investments In All Net Asset Groups]

July 2010

**School FIRST for Charter Schools - Rating Worksheet Calculations**  
**Dated July 2010**

	Indicator	Calculation Defined
20	Were The CS's Investment Earnings In All Net Asset Groups More Than \$5 Per Student?	$(A / B > \$5)$ Where A = [Total Investment Earnings]; B = [Number Of Students]
21	Could The CS Operate For Two Months Without Additional Funds? (Defensive Interval)	$(A + B + C) / ((D - E) / 12)$ Where A = [Cash], B = [Investments], C = [Accounts Receivable], D = [Total Expenses], E = [Depreciation Expense]

Indicator 14	
ADA Group	Standard
10,000 and Above	0.1105
5,000 to 9,999	.1250
1,000 to 4,999	.1401
500 to 999	.1561
Less than 500	.2654
Sparse	0.3614

		Ranges for Ratios	
School Size - Number of Students Between		Low	High
Indicator 15			
	<500	7.0	22
500	999	10.0	22
1,000	4,999	11.5	22
5,000	9,999	13.0	22
=>10,000		13.5	22
Indicator 16			
	<500	5.0	14
500	999	5.8	14
1,000	4,999	6.3	14
5,000	9,999	6.8	14
=>10,000		7.0	14

\* In accordance with generally accepted accounting principles established by the Financial Accounting Standards Board (FASB), the financial statements for a non-profit entity must be presented with an aggregate view of the entity as a whole. The indicators with an asterisk are based on the results of the audited financial statements for the entity as a whole. All other indicators are calculated for the financial results presented for the specific-purpose financial statements relating to the operations of the individual charter school.

For Questions Call The Division Of School Financial Audits At (512) 463-9095

July 2010

Figure: 25 TAC §200.7(a)

**Table 1. HAI Reporting Deadlines**

<b>Reporting Quarter</b>	<b>Jan 1 - Mar 31</b>	<b>Apr 1 - June 30</b>	<b>July 1 - Sept 30</b>	<b>Oct 1 - Dec 31</b>
Facility Data Submission Deadline	May 31	August 31	November 30	February 28
Departmental Data Reconciliation	June 15	September 15	December 15	March 15
Facility Correction	June 30	September 30	December 31	March 31
Departmental Data Summary	NA	October 15	NA	April 15
Facility Comment Period	NA	October 30	NA	April 30
Departmental Review of Comments	NA	November 15	NA	May 15
Posting of Summary	NA	December 1	NA	June 1

# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Texas Department of Agriculture

### Request for Applications: Poultry Loss Contract Grant Assistance Program

Up to \$60 million has been made available nationally by USDA under Section 32 of the Agricultural Adjustment Act of August 24, 1935 to be used to reestablish farmers' purchasing power and carry out a Poultry Loss Contract Grant Assistance Program (PGAP). The PGAP will provide assistance to poultry growers whose poultry growing arrangement with a live poultry dealer that filed proceedings under Chapter 11 of Title 11, United States Codes, in United States Bankruptcy Court during the 30-day period beginning on December 1, 2008, was terminated.

**Eligibility Criteria.** According to federally established rules, to be eligible for the Poultry Loss Contract Grant Assistance Program you must be a poultry producer who:

1. suffered a financial loss, as a result of a bankrupt live poultry dealer terminating its poultry growing arrangement with the poultry grower between May 1, 2008, and July 1, 2010;
2. did not enter into a poultry growing arrangement with any live poultry dealer for 1 month following the termination of its poultry growing arrangement with a bankrupt live poultry dealer;
3. was in compliance with the highly erodible land and wetland provisions of 7 CFR Part 12 for calendar year 2009;
4. did not have an average adjusted gross non-farm income, as defined in 7 CFR Part 1400 with respect to 2009 programs, that exceeded \$500,000 for calendar years 2005-2007; and
5. submits program loss documents as required.

**Required Documents.** Assistance shall only be provided to an eligible poultry grower that submits to the State acceptable documentation, determined by the State, that establishes, at a minimum:

1. the poultry grower's most recent 12-months production/receipts from a bankrupt live poultry dealer from which the poultry grower had a growing arrangement terminated between May 1, 2008, and July 1, 2010;
2. the poultry grower's most recent poultry growing arrangement with a bankrupt live poultry dealer before termination of such arrangement;
3. a copy of the termination letter from a bankrupt live poultry dealer to the poultry grower; and
4. a copy of the poultry growing arrangement entered into with a live poultry dealer if entered into between 1 and 12 months after the poultry growing arrangement was terminated by the bankrupt live poultry dealer.

Such documentation may include a listing from a bankrupt live poultry dealer that provides, at a minimum, a list of names of poultry growers, by facility, whose poultry growing arrangements were terminated.

5. Has records on file at an applicable Farm Service Agency county office that show:

- a. That its average adjusted gross non-farm income does not exceed \$500,000 for calendar years (2005-2007), as calculated under regulations in 7 CFR Part 1400; and

- b. Compliance with the conservation compliance eligibility provisions for other programs found at 7 CFR Part 12. 7 CFR Part 12 is available at [http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfr-browse/Title07/7cfr12\\_main\\_02.tpl](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfr-browse/Title07/7cfr12_main_02.tpl)

6. TDA is not obligated to make awards to poultry growers if submitted documentation of eligibility requirements do not meet TDA requirements.

**Submitting an Application.** Applications are currently being accepted, and must be submitted on the form provided by TDA. Application forms are currently available on TDA's website at <http://www.texasagriculture.gov/>, or available upon request from TDA by calling (512) 463-2805. Applications must be submitted to TDA headquarters in Austin, Texas. If mailing in the application, please make sure it is in a properly addressed envelope. The application must be received by TDA by Tuesday, November 30, 2010. Applications must be certified by the applicant, include required supporting documentation, and bear a notarized signature of the poultry grower.

**Payment Calculations.** The amount of assistance provided to each eligible poultry grower from a State shall be based upon such poultry grower's most recent 12 month production/receipts obtained from the poultry grower's settlement sheets issued by the bankrupt live poultry dealer with which the eligible poultry grower had a poultry growing arrangement.

Such amount shall be equal to the result of multiplying:

Ninety-five percent (95%) of the total net grower payment amounts from the most recent 12 month production/receipts from the poultry grower's settlement sheets issued by a bankrupt live poultry dealer, and

If the eligible poultry grower entered into a poultry growing arrangement between 1 month and 12 months after their poultry growing arrangement was terminated, a factor determined by dividing by 12 the number of months between the termination of their poultry growing arrangement and the entry into the new growing arrangement.

Amount of assistance is calculated before applying payment limitation and a state factor, if applicable.

The amount of assistance provided under this program to a person or legal entity will not be permitted to exceed the lesser of:

1. the amount of loss suffered by the eligible producer as determined by the above calculation; or
2. \$100,000, except for general partnerships and joint ventures in which case assistance will not exceed \$100,000 times the number of members that constitute the general partnership or joint venture.

The amount of assistance may be adjusted on a pro rata basis, if requested funds exceed \$60 million in all participating states.

**Deadline for Submission of Applications.** Applications must be received by TDA no later than **5:00 p.m. on Tuesday, November 30, 2010.**

**Further Information.** Additional information about the Poultry Loss Contract Assistance Program or the application process can be found on TDA's website at [www.TexasAgriculture.gov](http://www.TexasAgriculture.gov). In addition, poultry producers may contact Mr. Rick Sumner, TDA Grants Specialist, at (512) 463-2805 or [Rick.Sumner@TexasAgriculture.gov](mailto:Rick.Sumner@TexasAgriculture.gov) for more information.

TRD-201005826  
Dolores Alvarado Hibbs  
General Counsel  
Texas Department of Agriculture  
Filed: October 13, 2010

## Comptroller of Public Accounts

### Certification of the Average Taxable Price of Gas and Oil - September 2010

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined that the average taxable price of crude oil for reporting period September 2010, as required by Tax Code, §202.058, is \$61.37 per barrel for the three-month period beginning on June 1, 2010, and ending August 31, 2010. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of September 2010, from a qualified Low-Producing Oil Lease, is not eligible for exemption from the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined that the average taxable price of gas for reporting period September 2010, as required by Tax Code, §201.059, is \$3.57 per mcf for the three-month period beginning on June 1, 2010, and ending August 31, 2010. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of September 2010, from a qualified Low-Producing Well, is not eligible for exemption from the natural gas production tax imposed by Tax Code, Chapter 201.

Inquiries should be directed to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-201005785  
Ashley Harden  
General Counsel  
Comptroller of Public Accounts  
Filed: October 11, 2010

### Notice of Contract Award

The Comptroller of Public Accounts (Comptroller) announces the following contract award:

The notice of request for proposals (RFP #198b) was published in the June 4, 2010, issue of the *Texas Register* (35 TexReg 4736).

The contractor will provide currency hedged all country world ex-U.S. equity investment management services to the Comptroller and the Texas Prepaid Higher Education Tuition Board.

The contract was awarded to Grantham, Mayo, Van Otterloo & Co. LLC, 40 Rows Wharf, Boston, MA 02110. The total amount of the contract is based on the market value of assets held. The term of the contract is October 6, 2010 through August 31, 2015, with option for two additional one-year extensions, one year at a time.

TRD-201005754

William Clay Harris  
Assistant General Counsel, Contracts  
Comptroller of Public Accounts  
Filed: October 8, 2010

## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/18/10 - 10/24/10 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup>/credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/18/10 - 10/24/10 is 18% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment or other similar purpose.

TRD-201005799  
Leslie L. Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner  
Filed: October 12, 2010

## Texas Education Agency

### Correction of Error

The Texas Education Agency proposed the following new and amended rules in the October 8, 2010, issue of the *Texas Register*.

- Proposed amendments to 19 TAC Chapter 97, Planning and Accountability, Subchapter DD, Investigative Reports, Sanctions, and Record Reviews, §§97.1031, 97.1033, 97.1035, and 97.1037 (35 TexReg 9020)

- Proposed new 19 TAC Chapter 97, Planning and Accountability, Subchapter EE, Accreditation Status, Standards, and Sanctions, §97.1072, Residential Facility Monitoring; Determinations, Investigations, and Sanctions (35 TexReg 9022)

- Proposed amendments to 19 TAC Chapter 157, Hearings and Appeals, Subchapter EE, Review by State Office of Administrative Hearings: Certain Accreditation Sanctions, §§157.1151, 157.1153, 157.1155, 157.1167, 157.1169, and 157.1171 (35 TexReg 9030)

Due to an error by the Texas Education Agency, the preambles of the three proposals stated that the public comment period would begin October 1, 2010, and end November 1, 2010. The paragraphs should have stated that the public comment period would begin October 8, 2010, and end November 8, 2010. In the last sentence of the public comment paragraphs, the date October 1, 2010, as the beginning of the 14-day timeline to request a public hearing on the proposal, is also incorrect. It should be October 8, 2010.

The corrected paragraphs should read as follows:

"The public comment period on the proposal begins October 8, 2010, and ends November 8, 2010. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028. A re-



quest for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on October 8, 2010."

TRD-201005837

## Commission on State Emergency Communications

### Annual Review of 1 TAC §255.4

The Commission on State Emergency Communications (CSEC) is conducting its annual review of the definitions of the terms "local exchange access line" and "equivalent local exchange access line" as required by Texas Health and Safety Code §771.063(c). CSEC has initially determined that the current definitions sufficiently define the terms.

Persons wishing to comment on CSEC's initial determination or recommend amendments to 1 TAC §255.4 may do so by submitting written comments within 30 days following publication of this notice in the *Texas Register* to Patrick Tyler, General Counsel, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942; by facsimile to (512) 305-6937; or by e-mail to [csecinfo@csec.state.tx.us](mailto:csecinfo@csec.state.tx.us). Comments should include in the subject line "Comments on CSEC's Annual Review of Rule 255.4."

TRD-201005831

Patrick Tyler

General Counsel

Commission on State Emergency Communications

Filed: October 13, 2010

## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 22, 2010**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512)239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 22, 2010**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforce-

ment coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: ADIL AND WASEEM, INC. dba Shop-N-Go; DOCKET NUMBER: 2010-1146-PST-E; IDENTIFIER: RN102440187; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 Texas Administrative Code (TAC) §115.245(2) and Texas Health and Safety Code (THSC), §382.085(b), by failing to verify proper operation of the Stage II equipment; and 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases; PENALTY: \$4,840; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Johnnie L. Anderson; DOCKET NUMBER: 2010-1624-WOC-E; IDENTIFIER: RN105278766; LOCATION: Quinlan, Hunt County; TYPE OF FACILITY: wastewater licensing; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$210; ENFORCEMENT COORDINATOR: Kirk Schoppe, (512) 239-0489; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Autozone Texas, L.P.; DOCKET NUMBER: 2010-0736-PWS-E; IDENTIFIER: RN101651974; LOCATION: Harris County; TYPE OF FACILITY: public water supply (PWS); RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and THSC, §341.033(d), by failing to collect routine distribution water samples for coliform analysis and by failing to provide public notification of the failure to collect routine samples; PENALTY: \$2,104; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: City of Cedar Hill; DOCKET NUMBER: 2010-0935-PST-E; IDENTIFIER: RN102364346; LOCATION: Cedar Hill, Dallas County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs; 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued delivery certificate by submitting a properly completed UST registration and self-certification form; 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current delivery certificate; 30 TAC §334.50(b) and the Code, §26.3475(a), by failing to provide proper release detection for the piping associated with the USTs; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test the line leak detectors at least once per year for performance and operational reliability; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct detailed reconciliation of inventory control records; 30 TAC §334.50(d)(1)(B)(iii)(I) and the Code, §26.3475(c)(1), by failing to record inventory volume measurement for the regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §334.42(i), by failing to inspect all sumps, manways, overspill containers or catchment basins associated with a UST system; 30 TAC §115.244(1) and (3) and THSC, §382.085(b), by failing to conduct daily and monthly inspections of the Stage II vapor recovery system (VRS); 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment, vapor space manifold, and dynamic back pressure; 30 TAC §115.246(1), (3), (5), and (6) and THSC, §382.085(b), by failing to maintain Stage II records at the station; and 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one station representative received training in

the operation and maintenance of the Stage II VRS, and each current employee receives in-house Stage II VRS training regarding the purpose and correct operation of the Stage II equipment; PENALTY: \$12,025; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Carolyn Maxie dba Channel Oaks Water System; DOCKET NUMBER: 2010-0983-PWS-E; IDENTIFIER: RN101210391; LOCATION: Marble Falls, Burnet County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.46(d)(2)(A) and §290.110(b)(4), by failing to operate the disinfection equipment to maintain a free chlorine residual of 0.2 milligrams per liter throughout the distribution system; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; 30 TAC §290.46(m)(4), by failing to maintain all distribution system lines, storage and pressure maintenance facilities, water treatment units, and all related appurtenances in a watertight condition; 30 TAC §290.46(m)(6), by failing to maintain pumps, motors, valves, and other mechanical devices in good working condition; 30 TAC §290.43(e), by failing to provide an intruder-resistant fence for all potable water storage tanks and pressure maintenance facilities; 30 TAC §290.46(v), by failing to ensure that all electrical wiring is securely installed in compliance with local or national electrical code; 30 TAC §290.121(a) and (b), by failing to make available to the commission upon request an up-to-date chemical and microbiological monitoring plan; 30 TAC §290.46(f)(3)(D)(ii) and (E)(i), by failing to maintain and make available to the commission upon request an accurate and up-to-date record of water works operation and maintenance activities; and 30 TAC §290.45(b)(1)(C)(i) and THSC, §341.0315(a)(1), by failing to provide a minimum well capacity of 0.6 gallons per minute (gpm) per connection; PENALTY: \$2,622; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(6) COMPANY: City of Collinsville; DOCKET NUMBER: 2010-0963-PWS-E; IDENTIFIER: RN101387173; LOCATION: Collinsville, Grayson County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.42(e)(4)(A), by failing to provide a full-face self-contained breathing apparatus or supplied air respirator that meets Occupational Safety and Health Administration standards for construction and operation that is located outside the chlorination room and immediately available to the operator in the event of an emergency; 30 TAC §290.42(e)(3)(D), by failing to provide disinfection facilities for determining the amount of disinfectant used daily as well as the amount of disinfectant remaining for use; 30 TAC §290.46(f)(2), (3)(A)(i)(II), (ii)(II), (iii) - (vi), and (D)(i), by failing to keep on file and make available for review an up-to-date record of water works operations and maintenance activities for operator review and reference; and 30 TAC §290.45(b)(1)(D)(i), by failing to provide two or more wells having a total capacity of 0.6 gpm per connection; PENALTY: \$1,925; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: C T Corporation System dba Anderson Columbia Company, Inc.; DOCKET NUMBER: 2010-1616-WR-E; IDENTIFIER: RN105894802; LOCATION: Zapata County; TYPE OF FACILITY: water rights; RULE VIOLATED: the Code, §11.081 and §11.121, by impounding, diverting, or using state water without a required permit; PENALTY: \$350; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(8) COMPANY: DELTA ENTERPRISE, INC. dba Hempstead Texaco Crescent Star Foodmart; DOCKET NUMBER: 2010-0966-PST-E; IDENTIFIER: RN103938106; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage II VRS in proper operating condition; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of Stage II equipment, vapor space manifolding, and dynamic back pressure; PENALTY: \$4,143; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: Devon Gas Services, L.P.; DOCKET NUMBER: 2010-0995-AIR-E; IDENTIFIER: RN100223619; LOCATION: Bridgeport, Wise County; TYPE OF FACILITY: natural gas processing plant; RULE VIOLATED: 30 TAC §122.146(2), Federal Operating Permit Number O-02431/Oil and Gas General Operating Permit Number 511, Site-wide requirements (b)(2), and THSC, §382.085(b), by failing to submit an annual permit compliance certification; PENALTY: \$2,350; ENFORCEMENT COORDINATOR: Todd Huddleson, (512) 239-2541; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Elgin-Butler Company; DOCKET NUMBER: 2010-1292-AIR-E; IDENTIFIER: RN100724434; LOCATION: Elgin, Bastrop County; TYPE OF FACILITY: brick manufacturing; RULE VIOLATED: 30 TAC §116.110(a) and §116.115(b)(2)(F), New Source Review Permit Number 41602, General Condition Number 13, and THSC, §382.0518(a) and §382.085(b), by failing to submit a permit renewal application; PENALTY: \$7,000; ENFORCEMENT COORDINATOR: Raymond Marlow, (409) 898-3838; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(11) COMPANY: GARRETT CONSTRUCTION COMPANY; DOCKET NUMBER: 2010-0809-MLM-E; IDENTIFIER: RN101735207; LOCATION: Ingleside, San Patricio County; TYPE OF FACILITY: construction business; RULE VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste (MSW); 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of scrap tires; 30 TAC §328.56(d)(4) and §328.63(d)(2), by failing to have an effective vector control program for scrap tires stored on the ground; 30 TAC §324.6 and 40 Code of Federal Regulations (CFR) §279.22(d), by failing to perform cleanup actions upon detection of a release of used oil; and 30 TAC §324.11 and 40 CFR §279.24, by failing to use a TCEQ registered used oil transporter; PENALTY: \$8,312; ENFORCEMENT COORDINATOR: Rayesh Acharya, (512) 239-0577; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(12) COMPANY: Harrison County; DOCKET NUMBER: 2010-1614-WR-E; IDENTIFIER: RN101433720; LOCATION: Marshall, Harrison County; TYPE OF FACILITY: water rights; RULE VIOLATED: the Code, §11.081 and §11.121, by impounding, diverting, or using state water without a required permit; PENALTY: \$350; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(13) COMPANY: Ikoankar, LLC dba One Stop; DOCKET NUMBER: 2010-0921-PST-E; IDENTIFIER: RN100737493; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(1) and THSC, §382.085(b), by failing to successfully complete the Stage II VRS testing; PENALTY: \$3,661; ENFORCEMENT COORDINATOR:

TOR: Mike Pace, (817) 588-5800; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: Independent Oil Company dba Fuel Mart; DOCKET NUMBER: 2010-1042-PST-E; IDENTIFIER: RN101671709; LOCATION: Hillsboro, Hill County; TYPE OF FACILITY: fuel distributing operation with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(2) and the Code, §26.3475(d), by failing to provide proper corrosion protection for the UST system; PENALTY: \$4,500; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5800; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(15) COMPANY: Stanley Haedge dba KOW Castle Dairy; DOCKET NUMBER: 2010-0744-AGR-E; IDENTIFIER: RN102869708; LOCATION: Erath County; TYPE OF FACILITY: dairy farm and animal feeding operation; RULE VIOLATED: 30 TAC §321.47(f)(19)(B), by failing to maintain vegetation in the pastures; PENALTY: \$525; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Mullen-Telles, Inc.; DOCKET NUMBER: 2010-1615-WQ-E; IDENTIFIER: RN105984447; LOCATION: El Paso County; TYPE OF FACILITY: concrete plant; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit; PENALTY: \$700; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(17) COMPANY: MURPHY OIL USA, INC. dba Murphy USA 6553; DOCKET NUMBER: 2010-0897-PST-E; IDENTIFIER: RN102221306; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: gasoline service station; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; 30 TAC §115.242(3)(H) and THSC, §382.085(b), by failing to maintain the Stage II equipment in proper operating condition; and 30 TAC §115.242(9) and THSC, §382.085(b), by failing to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with a Stage II VRS; PENALTY: \$6,620; ENFORCEMENT COORDINATOR: Philip Aldridge, (512) 239-0855; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(18) COMPANY: OCHO NLSS MG CORPORATION dba Sams Food Mart 4; DOCKET NUMBER: 2010-1173-PST-E; IDENTIFIER: RN101378792; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment, vapor space manifold, and dynamic back pressure; PENALTY: \$2,742; ENFORCEMENT COORDINATOR: Cara Windle, (512) 239-2581; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(19) COMPANY: Pikoff Enterprise, Inc.; DOCKET NUMBER: 2010-1203-EAQ-E; IDENTIFIER: RN105947691; LOCATION: Georgetown, Williamson County; TYPE OF FACILITY: commercial business; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Plan prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: \$4,000; ENFORCEMENT COORDINATOR: Jordan Jones, (512) 239-2569; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(20) COMPANY: Pioneer General Contractors; DOCKET NUMBER: 2010-1535-WQ-E; IDENTIFIER: RN103210621; LOCATION: Amarillo, Randall County; TYPE OF FACILITY: storm water; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-section general permit; PENALTY: \$700; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(21) COMPANY: Rancho Sienna KC, L.P.; DOCKET NUMBER: 2010-0918-EAQ-E; IDENTIFIER: RN105897698; LOCATION: Williamson County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §213.4(a)(1) and §213.23(a)(1), by failing to obtain approval of a water pollution abatement plan (WPAP); PENALTY: \$4,500; Supplemental Environmental Project (SEP) offset amount of \$1,800 applied to Texas Association of Resource Conservation and Development Areas, Inc. - Unauthorized Trash Dump Clean-Up; ENFORCEMENT COORDINATOR: Martha Hott, (512) 239-2587; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(22) COMPANY: City of Roscoe; DOCKET NUMBER: 2010-0938-MLM-E; IDENTIFIER: RN105737555; LOCATION: Roscoe, Nolan County; TYPE OF FACILITY: MSW; RULE VIOLATED: 30 TAC §111.201 and THSC, §382.085(b), by failing to prohibit the burning of MSW for the purpose of disposal; and 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of MSW; PENALTY: \$2,100; ENFORCEMENT COORDINATOR: Danielle Porras, (512) 239-2602; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(23) COMPANY: Shell Oil Company and Shell Chemical, L.P.; DOCKET NUMBER: 2010-0609-AIR-E; IDENTIFIER: RN100211879; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: petroleum refinery and chemical manufacturing plant; RULE VIOLATED: 30 TAC §101.20(3) and §116.715(a), Air Flexible Permit Numbers 3219 and 21262 and PSD-TX-928, Special Condition Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$40,000; SEP offset amount of \$20,000 applied to Houston Regional Monitoring Corporation - *HRMC Houston Area Air Monitoring*; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(24) COMPANY: Swenson Water Supply Corporation; DOCKET NUMBER: 2010-1106-PWS-E; IDENTIFIER: RN101278083; LOCATION: Stonewall County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.42(l) and TCEQ Agreed Order Docket Number 2007-0302-PWS-E, Ordering Provision Number 2.a.i, by failing to compile a thorough and up-to-date plant operations manual for operator review and reference; and 30 TAC §290.46(f)(3)(A)(ii)(III) and TCEQ Agreed Order Docket Number 2007-0302-PWS-E, Ordering Provision Number 2.a.iv, by failing to maintain a record of operations at the facility; PENALTY: \$170; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(25) COMPANY: Texas Department of Aging and Disability Services; DOCKET NUMBER: 2010-1578-PST-E; IDENTIFIER: RN101815587; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(a)(1)(A), by failing to provide release detection; PENALTY: \$1,750; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(26) COMPANY: Westin Homes and Properties, L.P.; DOCKET NUMBER: 2010-1551-WQ-E; IDENTIFIER: RN105413058; LOCATION: Fort Bend County; TYPE OF FACILITY: storm water; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: \$700; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(27) COMPANY: Wright City Water Supply Corporation; DOCKET NUMBER: 2010-1172-PWS-E; IDENTIFIER: RN101238459; LOCATION: Troup, Smith County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.45(b)(1)(D)(iv) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 20 gallons per connection; and 30 TAC §290.45(b)(1)(D)(ii) and THSC, §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; PENALTY: \$166; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-201005813

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: October 12, 2010



#### Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 22, 2010**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 22, 2010**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: AHOR ENTERPRISE, INC. dba Quick Mart; DOCKET NUMBER: 2010-0322-PST-E; TCEQ ID NUMBER: RN100892173; LOCATION: 12669 Veterans Memorial Drive, Hous-

ton, Harris County; TYPE OF FACILITY: two underground storage tanks (USTs) and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.246(4), (5), and (7)(A) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for review upon request by agency personnel; 30 TAC §115.244(1) and (3) and THSC, §382.085(b), by failing to conduct daily and monthly inspections of the Stage II vapor recovery system at the station; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the UST identification number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube according to the UST registration and self-certification form; 30 TAC §334.42(i), by failing to inspect all sumps, manways, overspill containers or catchment basins associated with a UST system at least once every 60 days to ensure that their sides, bottoms, and any penetration points are maintained liquid tight; 30 TAC §334.49(a)(2) and TWC, §26.3475(d), by failing to ensure that a corrosion protection system is designed, installed, operated, and maintained in a manner that corrosion protection is continuously provided to all underground metal components of the UST system; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor USTs at the station for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.51(b)(2)(C) and TWC, §26.3475(c)(2), by failing to equip each UST with a valve or other device designed to automatically shut off the flow of regulated substances into the UST when the liquid level in the UST reaches no higher than 95% capacity; PENALTY: \$10,973; STAFF ATTORNEY: Gary Shiu, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Albemarle Corporation; DOCKET NUMBER: 2009-0687-AIR-E; TCEQ ID NUMBER: RN100218247; LOCATION: 2500 North South Street, Pasadena, Harris County; TYPE OF FACILITY: chemical plant; RULES VIOLATED: 30 TAC §115.764(c) and THSC, §382.085(b), by failing to determine the highly-reactive volatile organic compounds concentration no later than seven days after samples were collected; PENALTY: \$12,690, Supplemental Environmental Project (SEP) offset amount of \$6,345 applied to Harris County - Ambient and Meteorological Air Monitoring; STAFF ATTORNEY: Anna Treadwell, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: Brookshire Municipal Water District; DOCKET NUMBER: 2009-0839-MWD-E; TCEQ ID NUMBER: RN101920312; LOCATION: 3502 10th Street, immediately south of the intersection of Interstate Highway 10 and approximately 500 feet west of Brookshire Creek, Waller County; TYPE OF FACILITY: domestic wastewater treatment system; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a), and Texas Pollutant Discharge Elimination System Permit Number WQ0010001001, Interim Effluent Limits and Monitoring Requirements Number 1, by failing to comply with permit effluent limits for Total Ammonia Nitrogen; PENALTY: \$58,395, SEP offset amount of \$58,395 applied to a custom SEP; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: Daniel L. Mauldin dba Travis Equipment Company; DOCKET NUMBER: 2009-0714-MSW-E; TCEQ ID NUMBER: RN102777778; LOCATION: 3876 East Highway 287 (municipally referred to as 3876 East Main Street), Midlothian, Ellis County; TYPE OF FACILITY: wood mulching and compost facility; RULES VIOLATED: 30 TAC §328.5(b), by failing to properly notify the

executive director of recycling operations for materials generated at municipal and industrial facilities; 30 TAC §328.5(f)(1), by failing to maintain records pertaining to recyclable materials; and 30 TAC §37.921 and §328.5(d), by failing to obtain financial assurance for closure of the facility; PENALTY: \$4,899; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Derald Evans dba The Sprinkler Doctor; DOCKET NUMBER: 2010-0070-LII-E; TCEQ ID NUMBER: RN105859250; LOCATION: 7217 Richland Road, Richland Hills, Tarrant County; TYPE OF FACILITY: sprinkler repair service; RULES VIOLATED: 30 TAC §30.5(b) and TWC, §37.003, by failing to refrain from advertising or representing himself to the public as a holder of a license or registration unless he possesses a current license or registration or employs an individual who holds a current license; PENALTY: \$250; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: We Are Crazy, Inc. dba Country Pantry 11; DOCKET NUMBER: 2010-1137-PST-E; TCEQ ID NUMBER: RN102462785; LOCATION: 1079 Orange Street, Vidor, Orange County; TYPE OF FACILITY: two USTs and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.246(7)(A), by failing to maintain Stage II records at the station and make them immediately available for review upon request by agency personnel; and 30 TAC §334.10(b), by failing to maintain all UST records at the station and make them immediately available for inspection upon request by agency personnel; PENALTY: \$2,000; STAFF ATTORNEY: Marshall Coover, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-201005828

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: October 13, 2010



#### Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 22, 2010**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the

commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 22, 2010**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Anna S. Fuller dba FULLER OIL CO., INC., Dude Fuller dba FULLER OIL CO., INC. and Prissy F Knighten dba FULLER OIL CO., INC.; DOCKET NUMBER: 2009-2055-PST-E; TCEQ ID NUMBER: RN100532803; LOCATION: 535 East Avenue G, Silsbee, Hardin County; TYPE OF FACILITY: four underground storage tanks (USTs) and a former retail gasoline facility; RULES VIOLATED: 30 Texas Administrative Code (TAC) §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition; 30 TAC §334.47(a)(2) and §334.54(b)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, and by failing to maintain all piping, pump, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering or vandalism by unauthorized persons; and 30 TAC §334.22(a) and TWC, §5.702, by failing to pay outstanding UST fees and associated late fees for TCEQ Financial Account Number 23702731 for Fiscal Years 2006 - 2007; PENALTY: \$5,425; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: BOO KOOZ, INC. dba Boo Kooz C-S; DOCKET NUMBER: 2010-0547-PST-E; TCEQ ID NUMBER: RN102790805; LOCATION: 104 East Avenue L, San Angelo, Tom Green County; TYPE OF FACILITY: three USTs; RULES VIOLATED: 30 TAC §334.10(b), by failing to maintain the required UST records and make them immediately available for inspection upon request by agency personnel; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum UST; 30 TAC §334.49(b)(2), (c)(2)(C), and (4) and TWC, §26.3475(d), by failing to maintain all components electrically isolated from the corrosive elements of the surrounding soil, backfill, groundwater or any other water, and from other metallic components, failing to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly, and failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; 30 TAC §334.50(b)(1)(A), (2), and (A)(i)(III) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring), failing to test the line leak detectors at least once per year for performance and operational reliability, and failing to provide proper release detection

for the pressurized piping associated with USTs; PENALTY: \$13,625; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(3) COMPANY: Daniel Galvan, Jr.; DOCKET NUMBER: 2010-0813-WOC-E; TCEQ ID NUMBER: RN104455647; LOCATION: 1,200 feet southwest of the intersection of State Highway 71 and State Highway 111, Blessing, Matagorda County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §30.5(a) and §30.331(b) and TWC, §26.0301(c) and §37.003, by failing to obtain a valid wastewater operator license prior to performing process control duties in the treatment of wastewater; PENALTY: \$3,750; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: Erasmo Garcia; DOCKET NUMBER: 2010-0496-OSS-E; TCEQ ID NUMBER: RN105691786; LOCATION: 123 County Road 409, Brady, McCulloch County; TYPE OF FACILITY: On-Site Sewage Facility (OSSF); RULES VIOLATED: 30 TAC §285.3(b)(1) and Texas Health and Safety Code (THSC), §366.051(a), by failing to obtain authorization to construct an OSSF; PENALTY: \$262; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(5) COMPANY: Gloria Ann Poppe dba Poppes Pub & Grub and Kenneth John Poppe dba Poppes Pub & Grub; DOCKET NUMBER: 2010-0768-PWS-E; TCEQ ID NUMBER: RN105452650; LOCATION: 13176 Farm-to-Market (FM) Road 236, Victoria, Victoria County; TYPE OF FACILITY: restaurant with a public water system; RULES VIOLATED: 30 TAC §290.109(c)(3)(A)(ii) and §290.122(c)(2)(B), by failing to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result for a routine distribution coliform sample collected during the months of November 2008 - January 2009 and June 2009, and failing to provide public notice of the failure to collect repeat distribution samples within 24 hours of being notified of a total coliform positive sample for November 2008 - January 2009 and June 2009; 30 TAC §290.109(f)(3) and §290.122(b)(2) and THSC, §341.031(a), by failing to comply with the Maximum Contaminant Level for total coliform during the month of June 2009, and failing to provide public notice of the exceedence for June 2009; 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B), and THSC, §341.033(d), by failing to collect routine distribution water samples for coliform analysis for the months of June 2008, July 2008, and February 2010, and failing to provide public notice of the failure to sample for the months of June 2008 and July 2008; and 30 TAC §290.109(c)(2)(F) and §290.122(c)(2)(B), by failing to collect at least five distribution coliform samples the month following a total coliform positive sample result, and failing to provide public notification of the failure to collect five distribution samples for the months of September 2008, December 2008 - February 2009, and July 2009; PENALTY: \$6,643; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(6) COMPANY: Greg Larson and Karla Larson; DOCKET NUMBER: 2010-0385-OSS-E; TCEQ ID NUMBER: RN105804231; LOCATION: 288 County Road 201, Brady, McCulloch County; TYPE OF FACILITY: constructed, installed, altered and/or repaired an OSSF;

RULES VIOLATED: 30 TAC §285.3(b)(1) and THSC, §366.051(a), by failing to obtain authorization to alter an OSSF; PENALTY: \$525; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(7) COMPANY: Joe F. Slater; DOCKET NUMBER: 2010-0856-LII-E; TCEQ ID NUMBER: RN104805023; LOCATION: 4304 Peak Road, Granbury, Hood County; TYPE OF FACILITY: landscaping business; RULES VIOLATED: 30 TAC §30.5(a), TWC, §37.003, Texas Occupations Code, §1903.251, and TCEQ DO Docket Number 2008-0634-LII-E, Ordering Provisions Numbers 2.a. and 2.b., by failing to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system at 3105 Walnut Creek Parkway, Granbury, Hood County; 30 TAC §30.5(a), TWC, §37.003, Texas Occupations Code, §1903.251, and TCEQ DO Docket Number 2008-0634-LII-E, Ordering Provisions Numbers 2.a. and 2.b., by failing to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system at 3802 Birdsong Court, Granbury, Hood County; and TCEQ DO Docket Number 2008-0634-LII-E, Ordering Provision Number 1, by failing to pay the outstanding administrative penalty associated with a previous DO for TCEQ Financial Account Number 23604343; PENALTY: \$1,681; STAFF ATTORNEY: Stephanie Frazee, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Nabil A. Khatib; DOCKET NUMBER: 2010-0820-PST-E; TCEQ ID NUMBER: RN102428240; LOCATION: 2019 Evans Avenue, Fort Worth, Tarrant County; TYPE OF FACILITY: one inactive UST and a former convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and 30 TAC §334.22(a) and TWC, §5.702, by failing to pay outstanding UST fees and associated late fees for TCEQ Financial Account Number 0026441U; PENALTY: \$2,625; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: One Stop Landscape Shop, LLC; DOCKET NUMBER: 2010-0356-LII-E; TCEQ ID NUMBER: RN105868160; LOCATION: 7220 Scenic Brook Drive, Austin, Travis County; TYPE OF FACILITY: landscaping business; RULES VIOLATED: 30 TAC §30.5(b) and TWC, §37.003, by failing to refrain from advertising or representing oneself to the public as a holder of a license or registration unless they possess a current license or registration or unless they employ an individual who holds a current license; PENALTY: \$500; STAFF ATTORNEY: Marshall Coover, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(10) COMPANY: Ramon Aguilar; DOCKET NUMBER: 2010-0832-PST-E; TCEQ ID NUMBER: RN101722809; LOCATION: 1220 Fannin Street, Beaumont, Jefferson County; TYPE OF FACILITY: four initiative USTs; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; 30 TAC §334.7(d)(3), by failing

to notify the agency of any change or additional information regarding the USTs within 30 days from the occurrence of the change or addition; and 30 TAC §334.22(a) and TWC, §5.702, by failing to pay outstanding UST fees and associated late fees for TCEQ Financial Account Number 0070314U for Fiscal Years 2006 and 2007; PENALTY: \$4,900; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(11) COMPANY: Robert Wood Vance; DOCKET NUMBER: 2010-0739-LII-E; TCEQ ID NUMBER: RN103662250; LOCATION: 11 Champions Way, San Antonio, Bexar County; TYPE OF FACILITY: landscape irrigation company; RULES VIOLATED: 30 TAC §334.35(d)(2), by failing to obtain all permits required to install an irrigation system; PENALTY: \$262; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(12) COMPANY: Shiloh Ridge Water Supply Corporation; DOCKET NUMBER: 2010-0061-MLM-E; TCEQ ID NUMBER: RN101215549; LOCATION: two miles east of Highway 59, FM Road 1988, Polk County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted; 30 TAC §290.46(j), by failing to complete a customer service inspection certificate prior to providing continuous water service to new construction on any existing service either when the water purveyor has reason to believe that cross-connections or other potential contaminant hazards exist; 30 TAC §290.46(f)(2), (3)(A)(i)(III), (ii)(III), and (D)(ii), by failing to maintain facility operation and maintenance records and have them available for review by commission personnel during the investigation; 30 TAC §290.46(s)(1), by failing to calibrate well meters at the facility at least once every three years; 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations in the distribution system at least once every seven days; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and THSC, §341.0315(c), by failing to operate the disinfection equipment to maintain a minimum disinfectant residual of 0.2 milligrams/Liter (mg/L) of free chlorine throughout the distribution system at all times; 30 TAC §290.45(b)(1)(C)(ii) and THSC, §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; 30 TAC §290.45(b)(1)(C)(iii) and THSC, §341.0315(c), by failing to provide two or more service pumps with a total capacity of 2.0 gallons per minute (gpm) per connection; 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of manual disinfectant residual analyzers in the chlorine residual test kit at least once every 30 days using chlorine solutions of known concentrations; 30 TAC §290.41(c)(1)(D), by failing to prevent livestock from occupying the land within 50 feet of Well Number 2; 30 TAC §290.46(v), by failing to securely install all facility electrical wiring in compliance with a local or national electrical code; 30 TAC §290.43(d)(1), by failing to provide the facility's two 1,000 gallon pressure tanks with an access port for periodic inspections; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices at the facility to ensure the good working condition and general appearance of its facilities and equipment; 30 TAC §290.41(c)(3)(P), by failing to provide an all-weather access road to the Well Numbers 2 and 3 sites; and 30 TAC §288.30(5), by failing to develop and maintain a drought contingency plan for the facility; PENALTY: \$7,736; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-201005829

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: October 13, 2010

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Notice of Opportunity to Comment on Shutdown/Default  
Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Order (S/DO). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 22, 2010**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 22, 2010**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone numbers; however, comments on the S/DOs shall be submitted to the commission in **writing**.

(1) COMPANY: R.G.B. Transportation Company, Inc.; DOCKET NUMBER: 2010-0300-PST-E; TCEQ ID NUMBER: RN101654804; LOCATION: 1034 Humble Place, El Paso County; TYPE OF FACILITY: one underground storage tank (UST) and a fleet refueling facility; RULES VIOLATED: 30 TAC §334.49(c)(4) and TWC, §26.3475(d), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; 30 TAC §334.50(b)(2), (1)(A), (2)(A)(i), and (d)(1)(B)(ii) and TWC, §26.3475(a) and (c)(1), by failing to provide



proper release detection for the pressurized piping associated with the UST, by failing to monitor the UST for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring), by failing to equip each separate pressurized line with an automatic line leak detector, and by failing to provide release detection for the UST system by failing to conduct reconciliation of inventory control records at least once each month, sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST according to the UST registration and self-certification form; and 30 TAC §334.51(b)(2)(C) and TWC, §26.3475(c)(2), by failing to equip each tank with a valve or other appropriate device designed to either automatically shut off the flow or restrict the flow of regulated substances into the tank when the liquid level in the tank reaches a preset level; PENALTY: \$9,292; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

TRD-201005827

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: October 13, 2010



## Notice of Water Quality Applications

The following notices were issued on October 1, 2010 through October 8, 2010.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

### INFORMATION SECTION

**PHELPS DODGE REFINING CORPORATION** which operates Phelps Dodge El Paso Operations, an electrolytic copper refinery, has applied for a renewal of Texas Commission on Environmental Quality (TCEQ) Permit No. WQ0000461000, which authorizes the disposal of cooling water from anode casting and storm water via evaporation. This permit will not authorize a discharge of pollutants into water in the State. The facility and land application site are located at 897 Hawkins Boulevard, approximately one half mile south of Interstate 10 in the City of El Paso, El Paso County, Texas 79915.

**NALCO COMPANY** which operates a plant that produces antifoaming agents used in the paper industry, has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0002955000, which authorizes the discharge of non-contact cooling water at a daily average flow not to exceed 40,000 gallons per day via Outfall 001. The facility is located at 3901 Terry Street, one-third of a mile east of Loop 151 (U.S. Highway 59) and two-thirds of a mile south of U.S. Highway 67 in the City of Texarkana, Bowie County, Texas 75501.

**CABOT CORPORATION** which operates the Cabot Corporation Pampa Development and Manufacturing Center, a carbon black manufacturing facility, has applied for a major amendment to TCEQ Permit No. WQ0004226000 to authorize the disposal of non-contact cooling

water, wash water, boiler blowdown, and storm water via irrigation at a volume not to exceed 25,115 gallons per day. The current permit authorizes the disposal of non-contact cooling water, wash water, boiler blowdown, and storm water at an annual average flow rate not to exceed 485 gallons per day via evaporation. This permit will not authorize a discharge of pollutants into water in the State. The facility and land application site are located on the north side of the Panhandle Santa Fe Railroad and United States Highway 60, approximately five miles west of the City of Pampa, Gray County, Texas 79066.

**CITY OF OLNEY** has applied for a renewal of TPDES Permit No. WQ0010050003, which authorizes the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 46,000 gallons per day. The facility is located on Lake Cooper Road, 2,300 feet west of the intersection of Farm-to-Market Road 2178 and Lake Cooper Road in Archer County, Texas 76374.

**CITY OF NOCONA** has applied for a renewal of TPDES Permit No. WQ0010355002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 126,000 gallons per day. The facility is located on the north side of Locust Street, approximately 0.75 mile northwest of the intersection of U.S. Highway 82, State Highway 175, and Farm-to-Market Road 103 in Montague County, Texas 76255.

**CITY OF DILLEY** has applied for a renewal of TPDES Permit No. WQ0010404002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility is located approximately one mile southwest of the intersection of Interstate Highway 35 and State Highway 85 in Frio County, Texas 78017.

**THE CITY OF WICHITA FALLS** has applied for a renewal of TPDES Permit No. WQ0010509005, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility is located 6285 Burkburnett Road at the intersection of State Highway 240 and Hemme-Bacon Switch Road, north of the City of Wichita Falls in Wichita County, Texas 76306.

**THE CITY OF LAREDO** has applied for a renewal of TPDES Permit No. WQ0010681006, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 35,000 gallons per day in the Interim phase and 160,000 gallons per day in the Final phase. The current permit also authorizes the disposal of treated domestic wastewater via irrigation of 6.63 acres of non-public access land. The facility and irrigation site is located approximately 1 mile southwest of Farm-to-Market Road 1472 on an unnamed country road and 10.5 miles west-northwest of Farm-to-Market Roads 1472 and 3338, adjacent to the Rio Grande in Webb County, Texas 78040.

**CITY OF TALCO** has applied for a renewal of TPDES Permit No. WQ0010869001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 125,000 gallons per day. The facility is located on the north side of Farm-to-Market Road 71, approximately one mile northeast of the City of Talco in Titus County, Texas 75487.

**THE COUNTY OF HIDALGO** has applied for a renewal of TPDES Permit No. WQ0010973001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 5,000 gallons per day. The facility is located approximately 2 miles north of the intersection of Farm-to-Market Roads 88 and 1422, east of Farm-to-Market Road 88, adjacent to the Monte Alto Reservoir in Hidalgo County, Texas 78538. The treated effluent is discharged to Hidalgo and Willacy Water Control and Improvement District Ditch No. 1; thence to Laguna Madre in Segment No. 2491 of the Bays and Estuaries.



COTTON BAYOU MANOR MOBILE HOME PARK INC has applied for a renewal of TPDES Permit No. WQ0011109001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 32,000 gallons per day. The facility is located approximately 0.8 mile northeast of the intersection of Farm-to-Market Road 3180 and Farm-to-Market Road 565, and 1.6 miles south-southeast of the intersection of Farm-to-Market Road 3180 and Interstate Highway 10 in Chambers County, Texas 77520.

CITY OF NEW LONDON has applied for a renewal of TPDES Permit No. WQ0012376002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility is located one mile southeast of the intersection of State Highway 42 and Farm-to-Market Road 918 in Rusk County, Texas 75682.

RANCH UTILITIES L.P has applied for a renewal of TCEQ Permit No. WQ0014163001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The facility is located approximately 1,700 feet south-southwest of the Brazos River bridge crossing on Farm-to-Market Road 1189 in Parker County, Texas.

CITY OF LONE STAR has applied for a renewal of TPDES Permit No. WQ0014365001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 440,000 gallons per day. The facility is located approximately 1,500 feet east of U.S. Highway 259 on Morris County Road 2315 and approximately 4,000 feet south of the intersection of U.S. Highway 259 and Farm-to-Market Road 729 in Morris County, Texas 75668.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-201005834

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 13, 2010



### Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on October 11, 2010, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Ira Betts; SOAH Docket No. 582-10-0209; TCEQ Docket No. 2008-1814-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Ira Betts on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-201005835

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 13, 2010



### Texas Facilities Commission

#### Request for Proposal #303-1-20248

The Texas Facilities Commission (TFC), on behalf of the Texas Water Development Board (TWDB), announces the issuance of Request for Proposals (RFP) #303-1-20248. TFC seeks a five (5) or ten (10) year lease of approximately 1,707 square feet of office space in the City of Mesquite, Dallas County, Texas.

The deadline for questions is November 8, 2010, and the deadline for proposals is November 15, 2010, at 3:30 p.m. The target award date is December 15, 2010. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Contract Specialist Sandy Williams at (512) 475-0453 or [sandy.williams@tfc.state.tx.us](mailto:sandy.williams@tfc.state.tx.us). Any addendum to the original RFP will be posted to the Electronic State Business Daily (ESBD). A copy of the RFP may be downloaded from the Electronic State Business Daily at [http://esbd.cpa.state.tx.us/bid\\_show.cfm?bidid=91414](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=91414).

TRD-201005795

Kay Molina

General Counsel

Texas Facilities Commission

Filed: October 11, 2010



#### Request for Proposal #303-1-20255

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission (HHSC), announces the issuance of Request for Proposals (RFP) #303-1-20255. TFC seeks a five (5) or ten (10) year lease of approximately 7,100 square feet of warehouse space in Beaumont, Texas.

The deadline for questions is November 19, 2010, and the deadline for proposals is November 30, 2010, at 3:00 p.m. The target award date is December 17, 2010. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Contract Specialist Sandy Williams at (512) 475-0453 or [sandy.williams@tfc.state.tx.us](mailto:sandy.williams@tfc.state.tx.us). Any addendum to the original RFP will be posted to the Electronic State Business Daily (ESBD). A copy of the RFP may be downloaded from the Electronic State Business Daily at [http://esbd.cpa.state.tx.us/bid\\_show.cfm?bidid=91415](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=91415).

TRD-201005796

Kay Molina

General Counsel

Texas Facilities Commission

Filed: October 11, 2010



## General Land Office

### Notice of Approval of Coastal Boundary Survey

Pursuant to §33.136 of the Texas Natural Resources Code, notice is hereby given that Jerry Patterson, Commissioner of the General Land Office, approved a coastal boundary survey, submitted by William E. Merten, Licensed State Land Surveyor, conducted December 16, 2009, locating the following shoreline boundary:

Survey in Brazoria County along the line of Mean High Water at the confluence of Chocolate and Pleasant Bayous. The approved survey map delineates a portion of the littoral boundary of the Stephen F. Austin 1 3/4 League, Abstract 37.

The line depicted on the survey fixes the shoreline for purposes of locating a shoreline boundary, subject to movement landward of that line. This survey is intended to provide pre-project baseline information related to an erosion response activity on coastal public lands. An owner of uplands adjoining the project area is entitled to continue to exercise littoral rights possessed prior to the commencement of the erosion response activity, but may not claim any additional land as a result of accretion, reliction, or avulsion resulting from the erosion response activity.

For a copy of this survey or more information on this matter, contact Bill O'Hara, Director of the Survey Division, Texas General Land Office by phone at (512) 463-5212, email bill.ohara@glo.state.tx.us, or fax (512) 463-5223.

TRD-201005840

Larry L. Laine

Chief Clerk, Deputy Land Commissioner

General Land Office

Filed: October 13, 2010



### Notice of Approval of Coastal Boundary Survey

Pursuant to §33.136 of the Texas Natural Resources Code, notice is hereby given that Jerry Patterson, Commissioner of the General Land Office, approved a coastal boundary survey, submitted by James M. Naismith, Licensed State Land Surveyor, conducted March 28, 2010 and June 11, 2010, locating the following shoreline boundary:

Survey in Matagorda County, that extends along the southerly bank of the Colorado River Navigation Channel (old Colorado River bed), same line being a portion of the north boundary line of the Stephen F. Austin Survey, Abstract 2, Matagorda County; southeast of the Gulf Intracoastal Water Way and east of the confluence of the old Colorado River bed and the Colorado River Diversion Channel.

The line depicted on the survey fixes the shoreline for purposes of locating a shoreline boundary, subject to movement landward of that line. This survey is intended to provide pre-project baseline information related to an erosion response activity on coastal public lands. An owner of uplands adjoining the project area is entitled to continue to exercise littoral rights possessed prior to the commencement of the erosion response activity, but may not claim any additional land as a result of accretion, reliction, or avulsion resulting from the erosion response activity.

For a copy of this survey or more information on this matter, contact Bill O'Hara, Director of the Survey Division, Texas General Land Office by phone at (512) 463-5212, email bill.ohara@glo.state.tx.us, or fax (512) 463-5223.

TRD-201005838

Larry L. Laine

Chief Clerk, Deputy Land Commissioner

General Land Office

Filed: October 13, 2010



### Notice of Approval of Coastal Boundary Survey

Pursuant to §33.136 of the Texas Natural Resources Code, notice is hereby given that Jerry Patterson, Commissioner of the General Land Office, approved a coastal boundary survey, submitted by Stephen C. Blaskey, Licensed State Land Surveyor, conducted April 8, 2010, locating the following shoreline boundary:

Survey in Galveston County, along the line of Mean High Water on the southern shore of West Galveston Bay, west of and adjacent to the western shore of Pirates Cove subdivision, Section 8. The survey delineates the littoral boundary of portions of Lots 498 and 499 in Section 2 and Lots 5, 6, 9, 10, 19 and 26 in Section 3, and adjacent 50 foot roadways of the Trimble & Lindsey Survey of Galveston Island.

The line depicted on the survey fixes the shoreline for purposes of locating a shoreline boundary, subject to movement landward of that line. This survey is intended to provide pre-project baseline information related to an erosion response activity on coastal public lands. An owner of uplands adjoining the project area is entitled to continue to exercise littoral rights possessed prior to the commencement of the erosion response activity, but may not claim any additional land as a result of accretion, reliction, or avulsion resulting from the erosion response activity.

For a copy of this survey or more information on this matter, contact Bill O'Hara, Director of the Survey Division, Texas General Land Office by phone at (512) 463-5212, email bill.ohara@glo.state.tx.us, or fax (512) 463-5223.

TRD-201005839

Larry L. Laine

Chief Clerk, Deputy Land Commissioner

General Land Office

Filed: October 13, 2010



## Texas Health and Human Services Commission

### Notice of Public Hearing

Texas Council on Children and Families

Draft Report by Council Regarding Child Welfare

Wednesday, October 27, 2010

1100 W. 49th Street

Moreton Building

Boardroom Conference Room M739

Austin, Texas 78756

The Texas Council on Children and Families (TCCF) will conduct a public hearing to receive public comment on the Draft Recommendations by Council Regarding Child Welfare. The recommendations are required every two years by the Texas Government Code, §531.804, and will be submitted on December 1, 2010, to the governor, lieutenant governor, speaker of the house of representatives, and members of the legislature.

The draft recommendations are targeted on the further development and maintenance of a statewide system of quality health, education

and human services for children and families in the areas of mental health/behavioral health; early childhood/early intervention; transition to adulthood services; cross systems issues; and considerations for fiscal opportunities.

The TCCF is composed of four public members and leadership of the following agencies:

Texas Health and Human Services Commission

Texas Department of State Health Services

Texas Department of Family and Protective Services

Texas Department of Aging and Disability Services

Texas Department of Assistive and Rehabilitative Services

Texas Education Agency

Texas Juvenile Probation Commission

Texas Youth Commission

Texas Workforce Commission

Texas Correctional Office on Offenders with Medical or Mental Impairments

Representatives will attend from the TCCF membership listed above.

Interested parties may view the draft recommendations online at [http://www.hhsc.state.tx.us/about\\_hhsc/AdvisoryCommittees/Council.shtml](http://www.hhsc.state.tx.us/about_hhsc/AdvisoryCommittees/Council.shtml).

People who cannot attend the public hearing in person may submit comments in writing by:

(1) e-mail to [opccy@hhsc.state.tx.us](mailto:opccy@hhsc.state.tx.us); or

(2) mail to:

Office of Program Coordination for Children and Youth

Texas Health and Human Services Commission

P.O. Box 13247

Mail Code: 1214

Austin, Texas 78711

Contact: Sherri Hammack, Lead Program Staff, Office of Program Coordination for Children and Youth, Texas Health and Human Services Commission, P.O. Box 13247, Mail Code 1214, Austin, Texas 78711, (512) 420-2858, [sherri.hammack@hhsc.state.tx.us](mailto:sherri.hammack@hhsc.state.tx.us).

*This meeting is open to the general public. No reservations are required and there is no cost to attend this meeting.*

*People with disabilities who need auxiliary aids or services for this meeting are asked to call Cassandra Marx, Administrative Assistant, Office of Program Coordination for Children and Youth, Texas Health and Human Services Commission, at (512) 420-6963 at least 72 hours before the meeting.*

TRD-201005747

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: October 7, 2010



Notice of Public Hearing on Proposed Medicaid Payment Rates

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 9, 2010, at 1:30 p.m., to

receive comment on proposed Medicaid payment rates for Medicaid Frew initiative policies which include:

(1) diabetic equipment and supplies (includes: external insulin delivery system);

(2) medical procedures and devices (includes: cardio testing and recording, duodenal motility studies, gastric intubation, vertical electrodes, ergonovine provocation test, airway pressure ventilation testing, chest wall manipulation, ear or pulse oximetry, pediatric home apnea monitoring, electroencephalogram, tissue marker, pleural catheter, monitor/display modules and cables, emergency power sources and cables, and ventricular assist device and accessories);

(3) miscellaneous durable medical equipment (includes: defibrillators, replacement battery for defibrillator, gradient pressure aids, and splints);

(4) neurostimulators (includes: incision for, analysis of, and external recharging system for implanted neurostimulator and percutaneous implantation of neurostimulator electrodes);

(5) obstetric services (includes: fetal monitoring, umbilical cord occlusion, vaginal and cesarean delivery, in utero repairs, laser therapy, home delivery supplies, and fetal sampling);

(6) physician-administered drugs and biologicals (includes: injectables, infusions, and biologics);

(7) radiology and diagnostic imaging (includes: perineogram, endovascular repair, hemodialysis, and vessel mapping); and

(8) therapeutic radiopharmaceuticals (includes: tositumomab).

The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Metric Boulevard.

The hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 Texas Administrative Code (TAC) §355.201(e) - (f), which require public notice of and hearings on proposed Medicaid reimbursements.

**Proposal.** The proposed payment rates for Medicaid Frew Initiative Policies are proposed to be effective January 1, 2011.

**Methodology and Justification.** The proposed payment rates were calculated in accordance with:

1 TAC §355.8021, which addresses the reimbursement methodology for durable medical equipment and expendable supplies in home health services,

1 TAC §355.8081, which addresses payments for laboratory and x-ray services, radiation therapy, physical therapists' services, physician services, podiatry services, chiropractic services, optometric services, ambulance services, dentists' services, psychologists' services, licensed psychological associates' services, maternity clinic services, and tuberculosis clinic services;

1 TAC §355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners,

1 TAC §355.8093, which addresses the reimbursement methodology for physician assistants,

1 TAC §355.8281, which addresses the reimbursement methodology for nurse practitioners and clinical nurse specialists, and

1 TAC §355.8441, which addresses the reimbursement methodology for durable medical equipment and expendable supplies in Early and

Periodic Screening, Diagnosis, and Treatment (EPSDT) Program (known in Texas as Texas Health Steps).

In addition, the proposed rates will be reduced by one percent in accordance with direction from state leadership. The Legislative Budget Board and the Governor's Office informed HHSC in a letter dated May 17, 2010, of their revision to the Spending Reduction Plan for the 2010-2011 Biennium submitted by HHSC in response to the January 15, 2010, letter from the Governor, Lieutenant Governor, and Speaker requesting a spending reduction proposal. The result of this revision is that the reimbursements for these services provided on or after September 1, 2010, are reduced by one percent.

**Briefing Package.** A briefing package describing the proposed payment rates will be available on or after October 26, 2010. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at [esther.brown@hhsc.state.tx.us](mailto:esther.brown@hhsc.state.tx.us). The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to [esther.brown@hhsc.state.tx.us](mailto:esther.brown@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201005739

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: October 7, 2010



#### Notice of Public Hearing on Proposed Medicaid Payment Rates

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 9, 2010, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for 2nd Quarter Healthcare Common Procedure Coding System (HCPCS) updates. The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 Texas Administrative Code (TAC) §355.201(e) - (f), which require public notice of and hearings on proposed Medicaid reimbursements.

**Proposal.** The proposed payment rates for 2nd Quarter HCPCS updates are proposed to be effective January 1, 2011.

**Methodology and Justification.** The proposed payment rates were calculated in accordance with:

1 TAC §355.8081, which addresses payments for laboratory and x-ray services, radiation therapy, physical therapists' services, physician services, podiatry services, chiropractic services, optometric services, ambulance services, dentists' services, psychologists' services, licensed

psychological associates' services, maternity clinic services, and tuberculosis clinic services; and

1 TAC §355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners.

In addition, the proposed rates will be reduced by one percent in accordance with direction from state leadership. The Legislative Budget Board and the Governor's Office informed HHSC in a letter dated May 17, 2010, of their revision to the Spending Reduction Plan for the 2010-2011 Biennium submitted by HHSC in response to the January 15, 2010, letter from the Governor, Lieutenant Governor, and Speaker requesting a spending reduction proposal. The result of this revision is that the reimbursements for these services on or after September 1, 2010, are reduced by one percent.

**Briefing Package.** A briefing package describing the proposed payment rates will be available on or after October 26, 2010. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at [esther.brown@hhsc.state.tx.us](mailto:esther.brown@hhsc.state.tx.us). The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to [esther.brown@hhsc.state.tx.us](mailto:esther.brown@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201005740

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: October 7, 2010



#### Notice of Public Hearing on Proposed Medicaid Payment Rates

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 9, 2010, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for interventional pain management. The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 Texas Administrative Code (TAC) §355.201(e) - (f), which require public notice of and hearings on proposed Medicaid reimbursements.

**Proposal.** The proposed payment rates for interventional pain management are proposed to be effective January 1, 2011.

**Methodology and Justification.** The proposed payment rates were calculated in accordance with:

1 TAC §355.8081, which addresses payments for laboratory and x-ray services, radiation therapy, physical therapists' services, physician services, podiatry services, chiropractic services, optometric services, am-

bulance services, dentists' services, psychologists' services, licensed psychological associates' services, maternity clinic services, and tuberculosis clinic services,

1 TAC §355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners,

1 TAC §355.8093, which addresses the reimbursement methodology for physician assistants,

1 TAC §355.8121, which addresses the reimbursement methodology for ambulatory surgical centers, and

1 TAC §355.8281, which addresses the reimbursement methodology for nurse practitioners and clinical nurse specialists.

In addition, the proposed rates will be reduced by one percent in accordance with direction from state leadership. The Legislative Budget Board and the Governor's Office informed HHSC in a letter dated May 17, 2010, of their revision to the Spending Reduction Plan for the 2010-2011 Biennium submitted by HHSC in response to the January 15, 2010, letter from the Governor, Lieutenant Governor, and Speaker requesting a spending reduction proposal. The result of this revision is that the reimbursements for these services provided on or after September 1, 2010, are reduced by one percent.

**Briefing Package.** A briefing package describing the proposed payment rates will be available on or after October 26, 2010. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at [esther.brown@hhsc.state.tx.us](mailto:esther.brown@hhsc.state.tx.us). The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to [esther.brown@hhsc.state.tx.us](mailto:esther.brown@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201005741

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: October 7, 2010



#### Notice of Public Hearing on Proposed Medicaid Payment Rates

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 9, 2010, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for Positron Emission Tomography (PET) Scans. The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 Texas Administrative Code (TAC) §355.201(e) - (f), which require public notice of and hearings on proposed Medicaid reimbursements.

**Proposal.** The proposed payment rates for Positron Emission Tomography Scans are proposed to be effective January 1, 2011.

**Methodology and Justification.** The proposed payment rates were calculated in accordance with:

1 TAC §355.8081, which addresses payments for laboratory and x-ray services, radiation therapy, physical therapists' services, physician services, podiatry services, chiropractic services, optometric services, ambulance services, dentists' services, psychologists' services, licensed psychological associates' services, maternity clinic services, and tuberculosis clinic services; and

1 TAC §355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners.

In addition, the proposed rates will be reduced by one percent in accordance with direction from state leadership. The Legislative Budget Board and the Governor's Office informed HHSC in a letter dated May 17, 2010, of their revision to the Spending Reduction Plan for the 2010-2011 Biennium submitted by HHSC in response to the January 15, 2010, letter from the Governor, Lieutenant Governor, and Speaker requesting a spending reduction proposal. The result of this revision is that the reimbursements for these services provided on or after September 1, 2010, are reduced by one percent.

**Briefing Package.** A briefing package describing the proposed payment rates will be available on or after October 26, 2010. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at [esther.brown@hhsc.state.tx.us](mailto:esther.brown@hhsc.state.tx.us). The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to [esther.brown@hhsc.state.tx.us](mailto:esther.brown@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201005742

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: October 7, 2010



#### Notice of Public Hearing on Proposed Medicaid Payment Rates

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 9, 2010, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for substance use disorder services. The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 Texas Administrative Code (TAC) §355.201(e) - (f), which re-

quire public notice of and hearings on proposed Medicaid reimbursements.

**Proposal.** The proposed payment rates for Substance Use Disorder Services are proposed to be effective January 1, 2011.

**Methodology and Justification.** The proposed payment rates were calculated in accordance with 1 TAC §355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners.

**Briefing Package.** A briefing package describing the proposed payment rates will be available on or after October 26, 2010. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at [esther.brown@hhsc.state.tx.us](mailto:esther.brown@hhsc.state.tx.us). The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to [esther.brown@hhsc.state.tx.us](mailto:esther.brown@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201005743

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: October 7, 2010



## Notice of Public Hearing on Proposed Medicaid Payment Rates

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 9, 2010, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for family planning providers. The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 Texas Administrative Code (TAC) §355.201(e) - (f), which require public notice of and hearings on proposed Medicaid reimbursements.

**Proposal.** The proposed payment rates for family planning providers are proposed to be effective January 1, 2011.

**Methodology and Justification.** The proposed payment rates were calculated in accordance with:

1 TAC §355.8021, which addresses the reimbursement methodology for durable medical equipment and expendable supplies in home health services,

1 TAC §355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners,

1 TAC §355.8093, which addresses the reimbursement methodology for physician assistants,

1 TAC §355.8281, which addresses the reimbursement methodology for nurse practitioners and clinical nurse specialists,

1 TAC §355.8581, which addresses family planning counseling and educational services,

1 TAC §355.8582, which addresses family planning medical services,

1 TAC §355.8583, which addresses elective sterilization, and

1 TAC §355.8584, which addresses family planning maximum rates and specific codes.

In addition, the proposed rates will be reduced by one percent in accordance with direction from state leadership. The Legislative Budget Board and the Governor's Office informed HHSC in a letter dated May 17, 2010, of their revision to the Spending Reduction Plan for the 2010-2011 Biennium submitted by HHSC in response to the January 15, 2010, letter from the Governor, Lieutenant Governor, and Speaker requesting a spending reduction proposal. The result of this revision is that the reimbursements for these services provided on or after September 1, 2010, are reduced by one percent.

**Briefing Package.** A briefing package describing the proposed payment rates will be available on or after October 26, 2010. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at [esther.brown@hhsc.state.tx.us](mailto:esther.brown@hhsc.state.tx.us). The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to [esther.brown@hhsc.state.tx.us](mailto:esther.brown@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201005744

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: October 7, 2010



## Notice of Public Hearing on Proposed Medicaid Payment Rates

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 9, 2010, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the Quarterly Medicaid Fee Reviews for:

(1) medical and surgical supplies (includes catheters; incontinence appliances and supplies; urinary supplies; ostomy supplies; supplies for oxygen and respiratory equipment; supplies for radiologic procedures; dialysis supplies; diabetic shoes and fittings; and dressings); and

(2) durable medical equipment (includes wheelchairs and related equipment, canes, crutches, walkers, bath chairs, patient lifts, mattresses and accessories, commode chairs, hospital beds, oxygen and related respiratory equipment, breast pumps, electrical stimulation devices, and dialysis related equipment).

The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 Texas Administrative Code (TAC) §355.201(e) - (f), which require public notice of and hearings on proposed Medicaid reimbursements.

**Proposal.** The proposed payment rates are for Quarterly Medicaid Fee Reviews for:

(1) medical and surgical supplies (includes catheters; incontinence appliances and supplies; urinary supplies; ostomy supplies; supplies for oxygen and respiratory equipment; supplies for radiologic procedures; dialysis supplies; diabetic shoes and fittings; and dressings); and

(2) durable medical equipment (includes wheelchairs and related equipment, canes, crutches, walkers, bath chairs, patient lifts, mattresses and accessories, commode chairs, hospital beds, oxygen and related respiratory equipment, breast pumps, electrical stimulation devices, and dialysis related equipment).

The rates are proposed to be effective February 1, 2011.

**Methodology and Justification.** The proposed payment rates were calculated in accordance with:

1 TAC §355.8021, which addresses the reimbursement methodology for durable medical equipment and expendable supplies in home health services, and

1 TAC §355.8441, which addresses the reimbursement methodology for durable medical equipment and expendable supplies in Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program (known in Texas as Texas Health Steps).

In addition, the proposed rates will be reduced by one percent in accordance with direction from state leadership. The Legislative Budget Board and the Governor's Office informed HHSC in a letter dated May 17, 2010, of their revision to the Spending Reduction Plan for the 2010-2011 Biennium submitted by HHSC in response to the January 15, 2010, letter from the Governor, Lieutenant Governor, and Speaker requesting a spending reduction proposal. The result of this revision is that the reimbursements for these services provided on or after September 1, 2010, are reduced by one percent.

**Briefing Package.** A briefing package describing the proposed payment rates will be available on or after October 26, 2010. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at [esther.brown@hhsc.state.tx.us](mailto:esther.brown@hhsc.state.tx.us). The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to [esther.brown@hhsc.state.tx.us](mailto:esther.brown@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201005745

Steve Aragon  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: October 7, 2010

## Notice of Public Hearing on Proposed Medicaid Payment Rates

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 8, 2010, at 9:00 a.m. to receive public comment on proposed Youth Empowerment Services (YES) Waiver program rates for Out-of-Home Respite provided in a Texas Department of Family and Protective Services (DFPS) General Residential Operation (GRO) licensed to provide emergency care services. The YES Waiver program is operated by the Texas Department of State Health Services (DSHS). The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.105(g), which require public notice and hearings on proposed Medicaid reimbursements. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Esther Brown by calling (512) 491-1445, at least 72 hours prior to the hearing so appropriate arrangements can be made.

**Briefing Package.** A briefing package describing the proposed payment rates will be available on October 22, 2010. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Esther Brown by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at [Esther.Brown@hhsc.state.tx.us](mailto:Esther.Brown@hhsc.state.tx.us). The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Esther Brown, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Esther Brown at (512) 491-1998; or by e-mail to [Esther.Brown@hhsc.state.tx.us](mailto:Esther.Brown@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to Esther Brown, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-201005786  
Steve Aragon  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: October 11, 2010

## Public Notice

The Texas Health and Human Services Commission announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective October 23, 2011.

The amendment modifies the current reimbursement methodology in the Texas Medicaid State Plan for Case Management for Infants and Toddlers with Development Delays program by ending the Time and Financial Information (TAFI) system which is used to collect time and financial information. The random moment time study will be implemented and a new cost report will be developed.

The proposed amendment has no fiscal impact.

Interested parties may obtain copies of the proposed amendment by contacting Dan Huggins, Director of Rate Analysis for Acute Care Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1432; by facsimile at (512) 491-1998; or by e-mail at dan.huggins@hhsc.state.tx.us. Copies of the proposals will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201005794

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: October 11, 2010

## Texas Department of Insurance

### Notice of Public Hearing

#### 2010 TEXAS WORKERS' COMPENSATION BIENNIAL RATE REVIEW HEARING DOCKET NO. 2724

TO ALL INSURANCE COMPANIES, CORPORATIONS, EXCHANGES, MUTUALS, RECIPROCALs, ASSOCIATIONS, LLOYDS, OR OTHER INSURERS WRITING WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE IN THE STATE OF TEXAS, THEIR AGENTS AND REPRESENTATIVES, AND THE PUBLIC GENERALLY.

#### Subject and Scope

Notice is hereby given that a public hearing to review rates to be charged for workers' compensation insurance written in the State of Texas will be held before the Commissioner of Insurance (Commissioner). The hearing will begin at 9:30 a.m. in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas on November 10, 2010, and continue thereafter at dates, times, and places designated by the Commissioner until conclusion.

The scope of the hearing includes subjects and matters related to writing workers' compensation insurance in this state, including but not limited to (i) the effects on workers' compensation rates and premiums as a result of the enactment of House Bill 7, 79th Legislature, Regular Session, 2005 (HB 7); (ii) participation of employers in certified workers' compensation health care networks; (iii) participation of Texas businesses in the workers' compensation system; and (iv) other information to explain the change in the experience of workers' compensation in Texas since 2001.

#### Applicable Authority, Jurisdiction, Statutes and Rules

The Commissioner has jurisdiction over this hearing pursuant to Texas Insurance Code Chapter 2053, §31.021 and §2051.002; Title 5 of the Texas Labor Code; and other workers' compensation laws in this state.

Texas Insurance Code §2053.056(a) requires the Commissioner to conduct a public hearing each biennium to review rates to be charged for workers' compensation insurance written in this state. Pursuant to §2053.056(b), each insurance company subject to Chapter 2053 and §2051.002 is required to submit its rates, supporting information, and supplementary rating information to the Commissioner.

Pursuant to §2053.056(a) of the Texas Insurance Code, the public hearing is not a contested case as defined by Texas Government Code §2001.003. This proceeding is governed by Chapter 2053 of the Texas Insurance Code.

The Commissioner will consider written and oral testimony presented and filed by insurers, groups, trusts, agents, consumers, and others related to all aspects of writing workers' compensation insurance in Texas.

#### Requested Information

The Commissioner is particularly interested in receiving input in the following areas:

the impact of HB 7 on workers' compensation rates and premiums paid by Texas employers, including the projected workers' compensation rate and premium savings realized by employers as a result of the implementation of certified workers' compensation health care networks;

the effect of HB 7 legislative reforms on market competition, carrier loss ratios and combined ratios and the use and effect of individual risk premium variations;

the percentage of employers who provide workers' compensation insurance coverage for their employees;

the participation of employers in certified workers' compensation health care networks, with particular emphasis on small and medium-sized employers;

the factors affecting workers' compensation losses and premium changes in Texas since 2001, including information regarding insurers' experience regarding:

claim frequency changes;

changes in indemnity and medical costs;

use of carrier cost-containment and return-to-work strategies;

impact of the implementation of return-to-work guidelines, treatment guidelines and medical fee guidelines; and

any other factors influencing workers' compensation losses and premiums since 2001; and

a comparison of workers' compensation experience and average rate and premium levels in Texas with those in other states, and explanations for any differences.

#### Testimony and Exhibits

The Department will accept written testimony and exhibits on the matters to be considered in the public hearing. These should be submitted no later than 5:00 p.m. on November 3, 2010, to Gene C. Jarmon, General Counsel and Chief Clerk, Texas Department of Insurance, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of the comments should be simultaneously submitted to J'ne Byckovski, Chief Actuary, Property and Casualty Actuarial Division, Texas Department of Insurance, P.O. Box 149104, MC 105-5F, Austin, Texas 78714-9104. Interested persons may also submit oral and/or written testimony at the hearing.

#### Deadlines subject to change

All deadlines in this notice are subject to change at the Commissioner's discretion to the extent permitted by statute and rule.

TRD-201005790

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: October 11, 2010

Texas Windstorm Insurance Association



Proposed Amendments to Forms No. TWIA 310 and 320 (Extensions of Coverage) Reference Number P-1010-10 TDI #9212521235 and Link #110420

The Texas Department of Insurance (Department) hereby provides notice that pursuant to 28 Texas Administrative Code §5.4911 the Texas Windstorm Insurance Association (Association) has submitted to the Department for approval proposed amendments to Association forms No. TWIA 310 and 320 (Extensions of Coverage) for Association dwelling policies concerning the definition of primary residence and coverages for consequential loss, additional living expense, and wind-driven rain.

As specified in 28 Texas Administrative Code §5.4911(a)(3), interested persons may submit a written request for a public hearing on the submission not later than the 20th day after notice of the submission is posted in the *Texas Register* and the Department's website, which shall be the close of business November 12, 2010. The written request for a hearing must be separate from any written comments. The written request for a hearing must be submitted to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

As specified in 28 Texas Administrative Code §5.4911(a)(5), written comments on the submission must be submitted within 30 days after notice of the submission is posted in the *Texas Register* and the Department's website or on or before the date of a public hearing, if that date is later. The 30th day is the close of business November 22, 2010.

To be considered, written comments on the submission must be submitted to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Marilyn Hamilton, Associate Commissioner, Property and Casualty Program, Mail Code 104-PC, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

A copy of the submitted forms may be downloaded from the link [www.tdi.state.tx.us/submissions/index.html](http://www.tdi.state.tx.us/submissions/index.html) or obtained from the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

TRD-201005817

Gene C. Jarmon  
General Counsel and Chief Clerk  
Texas Department of Insurance  
Filed: October 12, 2010

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## Texas Lottery Commission

### Instant Game Number 1295 "Green Machine"

#### 1.0 Name and Style of Game.

A. The name of Instant Game No. 1295 is "GREEN MACHINE". The play style is "key number match with autowin and win x10".

#### 1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1295 shall be \$5.00 per ticket.

#### 1.2 Definitions in Instant Game No. 1295.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, COIN SYMBOL, STAR SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$200, \$2,000 or \$50,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1295 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THREE
4	FOUR
5	FIVE
6	SIX
7	SEVEN
8	EIGHT
9	NINE
10	TEN
11	ELEVN
12	TWLV
13	THRTN
14	FORTN
15	FIFTN
16	SIXTN
17	SVNTN
18	EGHTN
19	NINTN
20	TWENT
21	TWYONE
22	TWYTWO
23	TWYTHR
24	TWYFOR
25	TWYFIV
26	TWYSIX
27	TWYSVN
28	TWYEGT
29	TWYNIN
30	THIRTY
31	THYONE
32	THYTWO
33	THYTHR
34	THYFOR
35	THYFIV
36	THYSIX
37	THYSVN
38	THYEGT
39	THYNIN
40	FORTY
COIN SYMBOL	COIN
STAR SYMBOL	WINX10
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY

\$50.00	FIFTY
\$100	ONE HUND
\$200	TWO HUND
\$2,000	TWO THOU
\$50,000	50 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$10.00, \$15.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$25.00, \$50.00, \$100, \$150 or \$200.

H. High-Tier Prize - A prize of \$2,000 or \$50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1295), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1295-0000001-001.

K. Pack - A pack of "GREEN MACHINE" Instant Game tickets contains 075 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "GREEN MACHINE" Instant Game No. 1295 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "GREEN MACHINE" Instant Game is determined once the latex on the ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins the PRIZE shown for that number. If a player reveals a "COIN" play symbol, the player wins the PRIZE shown for that symbol instantly. If a player reveals a "STAR" play symbol, the player wins 10 TIMES the PRIZE shown for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 45 (forty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. The "STAR" (win x 10) will only appear on intended winning tickets as dictated by the prize structure.

C. The "COIN" (auto win) play symbol will never appear more than once on a ticket.

D. No five or more duplicate non-winning prize symbols on a ticket.

E. No duplicate WINNING NUMBERS play symbols on a ticket.

F. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

G. Non-winning prize symbols will never be the same as the winning prize symbol(s).

H. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 5 and \$5).

I. The top prize symbol will appear on every ticket unless otherwise restricted.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "GREEN MACHINE" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$100, \$150 or \$200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a \$25.00, \$50.00, \$100, \$150 or \$200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "GREEN MACHINE" Instant Game prize of \$2,000 or \$50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service

(IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "GREEN MACHINE" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

- B. if there is any question regarding the identity of the claimant;

- C. if there is any question regarding the validity of the ticket presented for payment; or

- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "GREEN MACHINE" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "GREEN MACHINE" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

### 3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment

to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 1295. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1295 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	480,000	12.50
\$10	680,000	8.82
\$15	80,000	75.00
\$20	100,000	60.00
\$25	80,000	75.00
\$50	80,000	75.00
\$100	3,450	1,739.13
\$150	2,250	2,666.67
\$200	600	10,000.00
\$2,000	450	13,333.33
\$50,000	6	1,000,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.98. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1295 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1295, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201005832

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: October 13, 2010



### Instant Game Number 1347 "Cash to Go!"

#### 1.0 Name and Style of Game.

A. The name of Instant Game No. 1347 is "CASH TO GO!". The play style is "straight line".

#### 1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1347 shall be \$1.00 per ticket.

#### 1.2 Definitions in Instant Game No. 1347.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: APPLE

SYMBOL, ORANGE SYMBOL, MELON SYMBOL, BANANA SYMBOL, STAR SYMBOL, LEMON SYMBOL, BELL SYMBOL, HORSESHOE SYMBOL, CLOVER SYMBOL, GOLDBAR SYMBOL, 7 SYMBOL, WISHBONE SYMBOL, CROWN SYMBOL, DIAMOND SYMBOL, CHERRY SYMBOL, GO SYMBOL, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00, \$100 and \$500.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1347 - 1.2D

PLAY SYMBOL	CAPTION
APPLE SYMBOL	APL
ORANGE SYMBOL	ORG
MELON SYMBOL	MEL
BANANA SYMBOL	BAN
STAR SYMBOL	STA
LEMON SYMBOL	LEM
BELL SYMBOL	BEL
HORSESHOE SYMBOL	SHO
CLOVER SYMBOL	CLO
GOLDBAR SYMBOL	BAR
7 SYMBOL	SVN
WISHBONE SYMBOL	WBN
CROWN SYMBOL	CRN
DIAMOND SYMBOL	DMD
CHERRY SYMBOL	CHY
GO SYMBOL	WINALL
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$40.00	FORTY
\$100	ONE HUND
\$500	FIV HUND

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$40.00, \$100 or \$500.

H. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

I. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1347), a seven (7) digit pack number, and

a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1347-0000001-001.

J. Pack - A pack of "CASH TO GO!" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

K. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

L. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "CASH TO GO!" Instant Game No. 1347 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "CASH TO GO!" Instant Game is determined once the latex on the ticket is scratched off to expose 16 (sixteen) Play Symbols. If a player reveals 3 matching play symbols within a GAME, the player wins the PRIZE shown for that GAME. If a player reveals a "GO" play symbol, the player wins ALL 4 PRIZES instantly! No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 16 (sixteen) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 16 (sixteen) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 16 (sixteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 16 (sixteen) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the

Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. No duplicate non-winning prize symbols on a ticket.

C. No duplicate non-winning GAMES on a ticket in any order.

D. Non-winning prize symbols will never be the same as the winning prize symbol(s).

E. The "GO" (win all) play symbol will only appear on winning tickets as dictated by the prize structure.

F. When the "GO" (win all) play symbol appears, there will be no occurrence of any GAME containing three duplicate play symbols.

G. On non-winning tickets, there will be many near wins defined as two duplicate play symbols within a GAME.

H. The top prize will appear on every ticket unless otherwise restricted by the prize structure.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "CASH TO GO!" Instant Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$40.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. As an alternative method of claiming a "CASH TO GO!" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission,

Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

D. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "CASH TO

GO!" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.7 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,080,000 tickets in the Instant Game No. 1347. The approximate number and value of prizes in the game are as follows:



Figure 2: GAME NO. 1347 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	873,600	11.54
\$2	873,600	11.54
\$4	235,200	42.86
\$5	100,800	100.00
\$10	67,200	150.00
\$20	25,620	393.44
\$40	12,600	800.00
\$100	840	12,000.00
\$500	420	24,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.60. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1347 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1347, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201005833  
Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: October 13, 2010

## Panhandle Regional Planning Commission

### Legal Notice

The Panhandle Regional Planning Commission (PRPC) is seeking quotes for 25-30 Infant and Toddler classroom packages. Each classroom will consist of appropriate furnishings, equipment and developmental learning materials that would allow recipient child care providers to be licensed by the Texas Department of Family and Protective Services (TDFPS) for one or more Infant-Toddler age groups, meet Texas Rising Star (TRS) Provider Certification guidelines and comply with additional provider award requirements as specified.

This project is funded by an American Recovery and Reinvestment Act (ARRA) grant and intended to assist area child care providers in increasing the numbers of Infants and Toddlers that can be served in a quality setting. To that end, selected providers in the area will be

awarded classroom packages as described above. A copy of the Request for Quotes (RFQ) can be obtained Monday through Friday, 8:00 a.m. to 5:00 p.m., at 415 West Eighth Avenue, Amarillo, Texas 79101 or by contacting Leslie Hardin, PRPC's Workforce Development Facilities Coordinator at (806) 372-3381 or lhardin@theprpc.org. Proposals must be received at PRPC by 3:00 p.m. on Monday, November 1, 2010.

TRD-201005773

Leslie Hardin

Facilities, Training and Support Coordinator  
Panhandle Regional Planning Commission

Filed: October 11, 2010

## Texas Parks and Wildlife Department

### Notice of Proposed Real Estate Transaction

#### Land Project Involving Exchange

#### Devils River State Natural Area - Val Verde County

In a meeting on Thursday, November 4, 2010, the Texas Parks and Wildlife Commission (the Commission) will consider and may take action regarding the exchange of properties in Val Verde County. Specifically, the Commission will consider the acquisition of approximately 17,638 acres in Val Verde County. The Commission will also consider transferring Texas Parks and Wildlife Department (TPWD) property consisting of the approximately 19,989-acre Devils River State Natural Area, also in Val Verde County, as partial payment for the acquisition. At this November 4, 2010, meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at TPWD Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at ted.hollingsworth@tpwd.state.tx.us or through the TPWD's web site at tpwd.state.tx.us.

TRD-201005748

Ann Bright  
General Counsel  
Texas Parks and Wildlife Department  
Filed: October 7, 2010

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**Texas State Board of Examiners of Psychologists**

**Notice of Correction**

The Texas State Board of Examiners of Psychologists proposed an amendment to 22 TAC §465.2, concerning Supervision, which was published in the May 28, 2010, issue of the *Texas Register* (35 TexReg 4304). Due to a clerical mistake, subsection (i) was deleted instead of being relettered and retained as part of the amended rule. The proposal was later adopted without changes in the September 10, 2010, issue of the *Texas Register* (35 TexReg 8366). No change to the requirement of supervision for licensed psychological associates and provisionally licensed psychologists was intended. The Texas State Board of Examiners of Psychologists will interpret and apply this rule as if the published adopted version contained the previous subsection (i). The Texas State Board of Examiners of Psychologists will promptly correct this error through the rule amendment process.

TRD-201005746  
Sherry L. Lee  
Executive Director  
Texas State Board of Examiners of Psychologists  
Filed: October 7, 2010

◆ ◆ ◆  
**Public Utility Commission of Texas**

**Announcement of Application for Amendment to a  
State-Issued Certificate of Franchise Authority**

The Public Utility Commission of Texas received an application on October 7, 2010, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

**Project Title and Number:** Application of Buford Media Group, LLC d/b/a Alliance Communications Network II to Amend its State-Issued Certificate of Franchise Authority, Project Number 38790 before the Public Utility Commission of Texas.

The requested amendment is to (1) expand the service area footprint to include the cities of Bandera, Bartlett, Blanco, Charlotte, Cooper, Easton, Freer, Granger, Jourdanon, and Poteet; in Bandera County, the unincorporated area known as Lake Hills and the unincorporated area one mile south of the City of Bandera on Highway 173, 500 feet on either side of the highway, to the intersection of Wharton Dock Road; in Bell County, the unincorporated area north of the City of Bartlett on Highway 95, 500 feet on either side of the highway, five miles into Bell County; and in Jim Hogg County, the unincorporated area known as Hebbronville; and (2) reduce the service area footprint by deleting the unincorporated area known as Easton.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) at 1-800-735-2989. All inquiries should reference Project Number 38790.

TRD-201005820

Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 12, 2010

◆ ◆ ◆  
**Notice of Application for a Limited Waiver to Code of Conduct**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on August 11, 2010, for a limited waiver to its code of conduct.

**Docket Style and Number:** Application of Wind Energy Transmission Texas, LLC for a Limited Waiver with Respect to its Code of Conduct, Docket No. 38568.

**The Application:** Wind Energy Transmission Texas, LLC (WETT), a transmission service provider, filed an application requesting a limited waiver to its code of conduct to allow I-USA to perform engineering, procurement and construction services for WETT in a manner similar to a shared corporate service.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket No. 38568.

TRD-201005818  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 12, 2010

◆ ◆ ◆  
**Notice of Application for Amendment to Service Provider  
Certificates of Operating Authority**

On October 7, 2010, DeltaCom, Inc. and Business Telecom, Inc. filed a joint application with the Public Utility Commission of Texas (commission) to amend service provider certificates of operating authority (SPCOA) granted in SPCOA Certificate Numbers 60202 and 60117, respectively. Applicant seeks approval to reflect a change in ownership/control.

**The Application:** Joint Application of DeltaCom, Inc. and Business Telecom, Inc. for Amendment to Service Provider Certificates of Operating Authority, Docket Number 38794.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 29, 2010. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 38794.

TRD-201005765  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 8, 2010

### Notice of Application for Designation as a Resale Eligible Telecommunications Provider

Notice is given to the public of an application filed with the Public Utility Commission of Texas on October 7, 2010, for designation as a resale eligible telecommunications provider (RETP) pursuant to P.U.C. Substantive Rule §26.419.

Docket Title and Number: Application of Birch Communications for Designation as a Resale Eligible Telecommunications Provider Pursuant to P.U.C. Substantive Rule §26.419. Docket Number 38792.

The Application: The company is requesting RETP designation in order to be eligible to receive funds for Lifeline Service from the Texas Universal Service Fund for reimbursement of the discounts provided through the Lifeline program. The company seeks RETP designation that will cover all of the wire centers of the ILECs, AT&T Texas and Verizon, and all of the study areas of the CenturyLink ILECs. The effective date shall be no earlier than 30 days after publication in the *Texas Register* which in this instance is November 22, 2010. The company holds Service Provider Certificate of Operating Authority Number 60400.

Persons who wish to comment on this application should notify the Public Utility Commission by November 11, 2010. Requests for further information should be mailed to the Public Utility Commission of Texas at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 38792.

TRD-201005766  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 8, 2010



### Notice of Application for Designation as a Resale Eligible Telecommunications Provider

Notice is given to the public of an application filed with the Public Utility Commission of Texas on October 11, 2010, for designation as a resale eligible telecommunications provider (RETP) pursuant to P.U.C. Substantive Rule §26.419.

Docket Title and Number: Application of Lightyear Network Solutions, LLC for Designation as a Resale Eligible Telecommunications Provider Pursuant to P.U.C. Substantive Rule §26.419. Docket Number 38801.

The Application: The company is requesting RETP designation in order to be eligible to receive funds for Lifeline Service from the Texas Universal Service Fund for reimbursement of the discounts provided through the Lifeline program. The company seeks RETP designation that will cover all of the wire centers of the non-rural ILECs and AT&T Texas and the entire study areas of the rural ILECs and CenturyLink. The company holds Service Provider Certificate of Operating Authority Number 60353. The effective date shall be no earlier than 30 days after publication in the *Texas Register* which in this instance the effective date is November 22, 2010.

Persons who wish to comment on this application should notify the Public Utility Commission by November 11, 2010. Requests for further information should be mailed to the Public Utility Commission of Texas at P.O. Box 13326, Austin, Texas 78711-3326, or you may call

the Public Utility Commission's Customer Protection Division at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) at 1-800-735-2989. All comments should reference Docket Number 38801.

TRD-201005821  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 12, 2010



### Notice of Application to Relinquish a Service Provider Certificate of Operating Authority

On October 7, 2010, Sage Spectrum, LLC filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60821. Applicant intends to relinquish its certificate.

The Application: Application of Sage Spectrum, LLC to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 38787.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 29, 2010. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 38787.

TRD-201005764  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 8, 2010



### Notice of Petition for Expanded Local Calling Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on September 8, 2010, for expanded local calling service (ELCS), pursuant to Chapter 55, Subchapter C of the Public Utility Regulatory Act (PURA).

Project Title and Number: Petition for Expanded Local Calling Service from the Encino Exchange to the Kingsville and Premont Exchanges Pursuant to Substantive Rule §26.219, Project No. 38646.

The petitioners in the Encino exchange request ELCS to the exchanges of Kingsville and Premont.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 12, 2010. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2789. All comments should reference Project No. 38646.

TRD-201005819  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 12, 2010

## Texas Department of Transportation

### Aviation Division - Request for Proposal for Professional Engineering Services

Kleberg County, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Kleberg County Airport during the course of the next five years through multiple grants.

Current Project: Kleberg County. TxDOT CSJ No. 1116KNGVL. Scope: Reconstruct and mark Runway 13-31 and reconstruct south Taxiway.

The DBE goal for the current project is 5%. TxDOT Project Manager is Paul Slusser.

Future scope work items for engineering/design services within the next five years may include but are not necessarily limited to the following:

1. Rehabilitate apron, hangar access taxiways and parallel taxiway.
2. Install Emergency Generator
3. Expand Apron
4. Security Fencing
5. Drainage improvements
6. Terminal area paving

Kleberg County reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the criteria, 5010 drawing, and most recent Airport Layout Plan are available online at [www.txdot.gov/avn/avninfo/notice/consult/index.htm](http://www.txdot.gov/avn/avninfo/notice/consult/index.htm) by selecting "Kleberg County Airport." The proposal should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at <http://www.txdot.gov/business/projects/aviation.htm>. The form may not be altered in any way.

All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format.

The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. A prime provider may only submit one proposal. If a prime provider submits more than one proposal, that provider will be disqualified. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a

previous download may not be the exact same format. Form AVN-550 is a PDF Template.

#### Please note:

Seven completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than November 16, 2010 at 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluation of engineering proposals can be found at <http://www.txdot.gov/business/projects/aviation.htm>. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Sheri Quinlan, Grant Manager. For technical questions, please contact Paul Slusser, Project Manager.

TRD-201005825

Jack Ingram

Associate General Counsel

Texas Department of Transportation

Filed: October 13, 2010

### Aviation Division - Request for Proposal for Professional Services

The Texas Department of Transportation (TxDOT) intends to engage an aviation professional services firms pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT will solicit and receive proposals for professional services for obstruction surveys for multiple airports, to the current standards listed in FAA AC 150/5300-16, FAA AC 150/5300-17 and FAA AC 150/5300-18B.

TxDOT CSJ No.: 11OBSURVY.

There is no DBE goal.

The Aviation Division of TxDOT intends to enter into one or two contracts for a five year period with prime providers to perform obstruction surveys. Work will be performed at various locations within the 254 counties of the state of Texas.

Interested firms shall prepare a proposal according to the following criteria. The criteria and points will be based on the following:

1. No more than one typed page describing general qualifications of company including years of operation, types of surveys successfully completed, evidence of timely completion of projects, certifications held, and other data pertinent to the company in general. **30 points.**
2. No more than three (3) typed pages detailing staff who will be utilized under this project and their qualifications and experience. **20 points.**
3. No more than one typed page listing equipment owned or controlled (leased) by the company for use under this project. **10 points.**

4. No more than three (3) typed pages describing the process and method utilized to perform obstruction surveys as required to be performed under this project. **30 points.**

5. No more than one page of a list of at least five references and list of no more than the 10 most recent completed surveys completed to the FAA's Airports GIS standard. TxDOT Aviation Division staff may not be used as references. **10 points.**

#### **Services to be Provided by the Consultant:**

The general services sought by TxDOT include all necessary professional engineering, surveying, planning, and project management services related to the development of the required aeronautical surveys and migration of data from existing electronic airport layout drawings into FAA Airports GIS.

The selected consultants will develop plans, complete ground surveys, collect aerial imagery, perform obstruction analysis, and deliver data and all materials via the Airports GIS website as described in FAA Advisory Circulars 150/5300-16, 17 and 18. Surveys may include data needed for an Airport Layout Plan (ALP) and/or obstruction chart in support of new instrument procedure development.

The selected consultants will validate data in existing electronic airport layout drawings, reconfigure the data to meet the standards in FAA Advisory Circulars 150/5300-16, 17 and 18 and submit the data via the Airports GIS website.

Each survey and all submissions to Airports GIS will be completed in a period of 120 days for each airport location, not inclusive of review times by the FAA, NGS, and TxDOT.

Five completed, unfolded copies of the proposal **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than November 16, 2010, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

Consultant selection will be made by a committee composed of Aviation Division staff members. The final selection by the committee will generally be made following the completion of a review of proposals. The committee will review all proposals and rate and rank each. All firms will be notified and the top rated firms will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews of the top rated firms if the committee deems it necessary. In such case, selection will be made following interviews. The committee reserves the right to reject any and all proposals and to conduct new professional services selection procedures.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager, or the designated Project Manager, Keith Snodgrass, for technical questions at 1-800-68-PILOT (74568).

TRD-201005801

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: October 12, 2010



Notice of Rescission of Notice of Intent to Prepare an Environmental Impact Statement - United States Highway 181/State Highway 286 (Crosstown Expressway), Nueces County, Texas

The Texas Department of Transportation (department), in cooperation with the Federal Highway Administration (FHWA), is issuing this no-

tice to advise the public that the Notice of Intent (NOI) to prepare an environmental impact statement (EIS) for a proposed transportation project is being rescinded. On April 6, 2007, the department and FHWA announced their intent to prepare an EIS pursuant to 43 TAC §2.12(d) for a proposal to replace the existing US 181 Harbor Bridge and construct improvements to SH 286. The project limits were defined as the limits of the schematic design. The project limits were as follows: the northern limit was the US 181 and Beach Avenue interchange located north of the Corpus Christi Ship Channel but south of the Nueces Bay Causeway; the southern limit was the SH 286 and SH 358 (South Padre Island Drive) interchange; the eastern limit was the Interstate Highway (IH) 37/US 181 intersection with Shoreline Boulevard; and the western limit was the IH 37 and Nueces Bay boulevard interchange. The project limits totaled approximately 7.5 miles in length from north to south along US 181 and SH 286, and 2.1 miles in length from east to west along IH 37. The study limits were defined as the limits of potential impacts from the proposed action. The study limits were as follows: the northern limit was the US 181 and SH 35 interchange just south of Gregory; the southern limit was the SH 286 and SH 358 (South Padre Island Drive) interchange; the eastern limit was Shoreline Boulevard; and the western limit was the IH 37 and SH 358 (North Padre Island Drive) interchange.

The EIS was in the preliminary stages of development. Scoping meetings were held for representatives from various cooperating agencies and for the public. The scoping meeting for the representatives from various cooperating agencies was held May 17, 2007, at the department's Corpus Christi District Office in Corpus Christi, Texas. The scoping meeting for the public was held May 17, 2007, at the Oveal Williams Senior Activity Center in Corpus Christi, Texas.

The department and FHWA have decided to issue this cancellation of the Notice of Intent because of changes in the project scope and limits. The department and FHWA intend to publish a new NOI in the future, which will describe new project limits. The review of the project under the new NOI will also follow the requirements of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) Section 6002 environmental review process. Appropriate project scoping, meetings, and environmental documents will be completed in the future as the project proceeds with a new scope and limits.

**Agency Contact:** Comments or questions concerning this proposed action should be sent to Paula Sales-Evans, P.E., Director of Transportation Planning and Development, Texas Department of Transportation, Corpus Christi District, 1701 South Padre Island Drive, Corpus Christi, Texas 78416; phone (361) 808-2222.

TRD-201005800

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: October 12, 2010



### **Stephen F. Austin State University**

#### **Notice of Consultant Contract Amendment**

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, Stephen F. Austin State University furnishes this notice of contract amendment to the University's contract with The Northeast Foundation for Children, Inc., 85 Avenue A, Suite 204, Turner Falls, MA 01376. The original contract was in the sum of \$14,500 with a beginning date of June 1, 2010 and ending date of June 5, 2010. The contract award was published in the July 2, 2010, issue of the *Texas Register* (35 TexReg 5978). This contract will be amended

to provide additional consultant services for an amount not to exceed \$6,300 for an extended contract termination date of October 6, 2010.

No documents, films, recording, or reports of intangible results will be required to be presented by the outside consultant. Services are provided on a per program basis.

For further information, please contact Ms. Lysa Hagan, Leader - SFA Charter School at (936) 468-5899.

TRD-201005823

Damon C. Derrick

General Counsel

Stephen F. Austin State University

Filed: October 12, 2010



## **The University of Texas System**

### **Invitation for Consultants to Provide Offers of Consulting Services**

In accordance with the provisions of Texas Government Code, Chapter 2254, The University of Texas System ("U.T. System") is seeking to contract with a consultant to evaluate and make recommendations for the improvement of the information security programs at U.T. System and its institutions ("Consulting Services").

The Chancellor of U.T. System has made a finding that the Consulting Services are necessary. However, U.T. System has determined that neither it nor its institutions have the necessary in-house expertise to perform such Consulting Services. Furthermore, U.T. System cannot obtain the necessary Consulting Services through a contract with another state governmental entity.

U.T. System will:

(a) select the consultant based on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the Consulting Services; and

(b) if other considerations are equal, give preference to a consultant whose principal place of business is in the state or who will manage the consulting contract wholly from an office in the state.

To obtain a copy of the Invitation for Offers for the Consulting Services identified in this Notice contact:

Lewis Watkins

Chief Information Security Officer

The University of Texas System

201 West 7th Street

Austin, Texas 78701

lwatkins@utsystem.edu

(512) 499-4540

Offers must be received by U.T. System no later than November 12, 2010.

TRD-201005844

Francie A. Frederick

General Counsel to the Board

The University of Texas System

Filed: October 13, 2010



### How to Use the Texas Register

**Information Available:** The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Secretary of State** - opinions based on the election laws.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 35 (2010) is cited as follows: 35 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "35 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 35 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document

format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

### Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

### TITLE 1. ADMINISTRATION

#### Part 4. Office of the Secretary of State

#### Chapter 91. Texas Register

40 TAC §3.704.....950 (P)